GAHC010203382016

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

Case No. : WP(C)/5940/2021

AMIL KUMAR KALITA
S/O LT. SONARAM KALITA
R/O SATRIBARI
HOUSE NO. 228
P.O. REHABARI
P.S. PALTAN BAZAR
DIST. KAMRUP (M) ASSAM
PIN-781008

VERSUS

THE STATE OF ASSAM AND 23 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
CO. OPERATIVE DEPTT. DISPUR
GUWAHATI-6

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
ASSAM
3:THE COMMISSIONER OF POLICE
CITY GUWAHATI
KAMRUP (M) ASSAM
4:THE REGISTRAR OF CO OPERATIVE SOCIETIES
ASSAM
KHANAPARA GUWAHATI-22
5:THE JOINT REGISTRAR OF CO OPERATIVE SOCIETIES
ASSAM
KHANAPARA GUWAHATI-22
6:THE SUB REGISTRAR OF CO OPERATIVE SOCIETIES
GUWAHATI
7:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
GUWAHATI
8:THE GUWAHATI CO OPERATIVE URBAN BANK

HAVING REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
REP. BY ITS CHAIRMAN
9:THE CHAIRMAN
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
10:THE BOARD OF DIRECTORS
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
11:PRANAB GOSWAMI
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
12:MADAN CH. GOSWAMI
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
13:CHANDRAWATI SANGMA
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
14:BHUBANESWAR DAS
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
15:PRABIN KUMAR DEKA
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
16:NAGEN DEKA
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
17:DILIP CHANDRA GOSWAMI
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
18:BISWAJIT MAHANTA
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
19:SANJAY MAHANTA
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
20:BIPUL CH. PAUL

GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
21:DIGAMBAR BARMAN
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
22:ARUP GOSWAMI
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
23:BIJOYANANDA CHOUDHURY
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1
24:PRITI CHOUDHURY
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED OFFICE AT K.C. ROAD
CHATRIBARI GUWAHATI-1

Advocate for the Petitioner : Mr. J. I. Borbhuiya, Advocate

Advocate for the Respondents : Mr. K. N. Choudhury, Sr. Advocate
: Mr. J. Patowary, Advocate
: Mr. R. B. Goswami, Advocate
: Ms. M. D. Borah, SC, Cooperation Department

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 25-08-2023

1. The instant writ petition has been filed challenging the Minutes of the Meeting dated 18.09.2020 as well as the approval accorded by the Cooperation Department.

2. The relevant facts as could be discerned from a perusal of the writ petition as well as the other pleadings in the instant proceedings would show

that the Guwahati Co-operative Urban Bank Ltd. (hereinafter referred to as "the Bank") is a Co-operative Society registered under the provisions of the Assam Co-operative Societies Act, 2007 (for short "the Act of 2007"). The tenure of the Board of Directors was supposed to expire in the year 2020. Under such circumstances, prior to the expiry of the tenure, a notice dated 31.07.2020 was issued by the Managing Director of the Bank inviting all shareholders/members to be present at the 51st Annual General Meeting of the Bank. In terms with the said notice dated 31.07.2020, the Annual General Meeting was scheduled to be held on 11.09.2020 at 11 AM at the conference hall of Sanatan Dharma Sabha (Hari Sabha) situated at S.C. Goswami Road, Panbazar. In the said notice, it was also mentioned that if for any unavoidable circumstances, the meeting cannot be held, then the meeting would be held at the same time, same place on 18.09.2020. It is also relevant to take note of the agenda of the said meeting which amongst others stipulated that a new Governing Body of the Bank would be constituted in terms with Act of 2007.

3. This Court also finds it relevant to take note that the Cooperative Bank in question comprises of 4265 shareholders as on 31.03.2020. In the meeting which was held on 11.09.2020, only 22 shareholders were present. The minimum requisite quorum as per Section 34(1) of the Act of 2007 is 10% of the total shareholders i.e. 426 shareholders ought to have been present. Under such circumstances, the Chairman of the Bank adjourned the 51st Annual General Meeting dated 11.09.2020 to be held at the same time, same venue with the same agenda on 18.09.2020.

4. It reveals from the records that the Petitioner who is one of the

shareholders had submitted certain representations to the Deputy Commissioner, Kamrup (M), Guwahati as well as to the Police Commissioner, Guwahati City Police on 17.09.2020 stating inter alia that in view of the COVID-19 Pandemic as well as the restrictions, no permission could be granted for the purpose of holding the meeting on 18.09.2020.

5. Be that as it may, on 18.09.2020 at 11 AM, the 51st Annual General Meeting was scheduled. The Minutes of the said proceedings of the 51st Annual General Meeting dated 18.09.2020 is enclosed as Annexure-6 to the writ petition. It transpires from the said Minutes that although there was a requirement of having 10% of the shareholders to be present, i.e. 426 shareholders, but only 101 shareholders were present. The Agenda which was given in the notice dated 31.07.2020 was carried out and the Respondent Nos. 11 to 24 were elected as Board of Directors of the Bank for the period from 2020 to 2025. Thereupon, on 21.09.2020, the Managing Director of the Bank issued a communication to the Assistant Registrar of Co-operative Societies, Guwahati seeking approval of the 51st Annual General Meeting of the Bank held on 18.09.2020. It is the case of the Petitioner that the Assistant Registrar of Cooperative Societies, Guwahati had accorded the approval. It is under such circumstances that the instant writ petition was filed on 30.10.2021.

6. The record reveals that vide an order dated 12.11.2021 notice was issued by this Court.

7. The Cooperation Department of the Government of Assam had filed their affidavit-in-opposition on 22.12.2021. In the said affidavit-in-opposition,

it was mentioned that the Assistant Registrar of Co-operative Societies after the perusal of the Observers report had given the approval to the meeting dated 18.09.2020 as per Sections 24 and 45 of the Act of 2007. In paragraph No.8 of the said affidavit-in-opposition, it was mentioned that the Annual General Meeting of the Bank held on 11.09.2020 was adjourned due to lack of quorum and the same was adjourned to 18.09.2020. It was mentioned that the Observers had given a report that in the Annual General Meeting held on 18.09.2020, the number of shareholders present were 101 out of which 20 shareholders were present in the meeting hall and the remaining shareholders were in the open area of the premises maintaining social distancing and other COVID-19 protocols.

8. It is further relevant to take note of that the Respondent No.3 had filed an affidavit-in-opposition through the Deputy Commissioner of Police (S & I), Guwahati. In the said affidavit-in-opposition, it was mentioned that no complaint was received by the Security and Intelligence Branch, Police Commissioner at Guwahati but a complaint petition was submitted by the Petitioner before the Commissioner of Police, Guwahati on 17.09.2020 which was forwarded to Panbazar Police Station through the Assistant Commissioner of Police (Panbazar), Guwahati and was received on 19.09.2020 by Panbazar Police Station. After receipt of the same, an enquiry was made by the Panbazar Police Station wherein it came to light that Hari Sabha Committee leased their Sabha Griho to the Bank for organizing their program maintaining Government SOP on 18.09.2020. The Authority of Hari Sabha did not lodge any FIR for violation of the COVID protocol and the Government SOP.

9. The record further shows that the Respondent Nos. 9, 10 and 11 had

filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that as the tenure of the earlier Board of Directors was coming to an end and, an Annual General Meeting (51st AGM) was sought to be convened on 11.09.2020 to do the business as set out in the Agenda. The said meeting was scheduled at 11 AM in the conference hall of Sanatan Dharma Sabha (Hari Sabha), S.C. Goswami Road. It was further mentioned that the Respondent Bank sought for permission from the Deputy Commissioner, Kamrup (M) for holding the AGM but there was no response from the Office of the Deputy Commissioner, Kamrup (M). In paragraph No.4 of the said affidavit-in-opposition, it was stated that as per Section 34(3) of the Act of 2007 read with Article 22 of the bylaws of the Respondent Bank, when a General Meeting is adjourned due to lack of quorum and the same is notified at the later date, then the adjourned meeting can proceed with the business whether there is a quorum or not. It was further stated that the AGM scheduled on 11.09.2020 was adjourned due to lack of quorum and as such in the adjourned meeting dated 18.09.2020, the question of lack of quorum does not arise. It was further mentioned that as the Respondent Bank was dealing with public money, the functioning of the Bank has to go on and as such by following COVID protocol, AGM in question was duly held in presence of the competent authorities.

10. This Court further finds it relevant to take note of that the Petitioner had filed affidavit-in-reply to the affidavit-in-opposition filed by the Respondent Nos. 1, 5, 6, 7 and 8 i.e. the affidavit-in-opposition filed by the Cooperation Department. The Petitioner had also filed an affidavit-in-reply against the affidavit-in-opposition filed by the Commissioner of Police. It is relevant to take note of that in the said affidavit-in-reply filed by the Petitioner

against the affidavit-in-opposition filed by the Commissioner of Police, it was mentioned that an SOP was issued on 04.09.2020 under Memo No.ASDMA.24/2020/Part-I/112 whereby there was a complete ban of public gathering.

11. Mr. K. N. Choudhury, the learned Senior counsel appearing on behalf of the Private Respondents submitted that both the meeting under Section 34(2) and 34(3) of the Act of 2007 have to be given the same status as a subsequent meeting inasmuch as per the Senior counsel, an adjourned meeting and a subsequent is one and the same. In that regard, he drew the attention of this Court to the provisions of Section 33(4), 34(2), 34(3) and 39 of the Act of 2007. The learned Senior counsel submitted that if a quorum is required in a meeting which is scheduled in terms with Section 34(2) of the Act of 2007, the shareholders may with vested interest not permit to hold the adjourned meeting and thereby by virtue of Section 39 of the Act of 2007, the Board would be dissolved although the said Board's tenure is 5 years as per Section 31 of the Act of 2007. The learned Senior counsel referred to a judgment of the Division Bench of this court in the case of ***Nalin Chandra Hazarika Vs. State of Assam & Others*** *reported in* ***(1994) 1 GLR 1***. Emphasis was placed to Paragraph Nos. 7 & 8 of the said judgment. The learned Senior counsel also challenged the maintainability of the writ petition in view of Section 111 of the Act of 2007.

12. This Court had duly heard the learned counsels for the parties and had perused the materials on record.

13. Before deciding on the merits, this Court finds it relevant to take note of the submission made by Mr. K. N. Choudhury, the learned Senior counsel

appearing on behalf of the Private Respondents wherein he submitted that as per Section 111 of the Act of 2007, the Petitioner has an alternative remedy and as such the instant writ petition ought not to be entertained. Although, there has been no pleadings in the affidavit-in-opposition filed by the Private Respondents challenging the maintainability of the writ petition but taking into account the said submission, this Court finds it relevant to deal with the same. The issue involved herein is as to whether a quorum is required in terms with Section 34 of the Act of 2007 read with Byelaw 22 of the Bank in respect to a meeting adjourned by virtue of Section 34(2) of the Act of 2007. This being a pure question of law to be decided on an interpretation of the provisions of the Act of 2007, this Court is of the opinion that relegating the Petitioner to the statutory provision of appeal under Section 111 of the Act of 2007 would not be proper in view of the well settled principles of law laid down by the Supreme Court. In that regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others*** *reported in* ***(2023) SCC Online SC 95*** and more particularly to Paragraph No.8 which is quoted hereinbelow:

> "*8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant*

to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available."

14. In that view of the matter, this Court takes up the writ petition on merits. As already observed, the question involved is as to whether in the meeting which was held on 18.09.2020, there was a necessity to have a quorum in terms with Section 34 of the Act of 2007 read with Byelaw 22 of the Respondent Bank. To answer the said legal issue, this Court finds it relevant to take note of Section 9 and 34 of the Act of 2007 as well as Byelaw 22 of the Respondent Bank. Accordingly, Section 9 and Section 34 of the Act of 2007 and Byelaw 22 are quoted hereinbelow:

"***9. Byelaws-*** *(1) A cooperative society shall frame their own bye-laws and the affairs of the cooperative society shall be managed in accordance with the terms, conditions and procedure specified in the bye- -laws*

(2) Subject to the provisions of this Act, the functioning of every cooperative society shall be regulated by its bye- -laws.

(3) The bye-laws may contain such matters as decided by the General Assembly and shall be specific and confined only to the matters provided in Schedule B. However, the bye-laws of a society shall in no case supersede the provisions of the Act.

"***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."

Byelaw 22. ADJOURNMENT OF MEETING

Amendment in the General Meeting dt. 21.07.2012 and approved by RCS on 08.08.2013.

If within the honour from the time fixed for a meeting of the General Assembly a quorum is not present the meeting shall stand adjourned ordinally 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. 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 bought forward at the subsequent meeting whether at such meeting there is a quorum or not. Provided no business other than the business fixed for the original meeting shall be transacted at such subsequent meeting. A notice of such adjournment posted in the notice board of the Head Office of the society on the day on which the meeting is adjourned shall be deemed sufficient notice of the next subsequent meeting."

15. Section 9 of the Act of 2007 and more particularly Sub-Section (3) of Section 9 of the Act of 2007 clearly envisages that the byelaws of the society shall in no case supersede the provisions of the Act of 2007. In that view of the matter, Byelaw 22 of the Respondent Bank cannot run contrary to the Provisions of the Act of 2007 and more particularly Section 34 of the Act of 2007 as in the present case.

16. This Court would also like to take note of Section 33(4) of the Act of 2007 to which reference was made by Mr. K. N. Choudhury, the learned Senior counsel appearing on behalf of the Private Respondents. 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."

17. A perusal of the above quoted Section 33(4) would show 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 Sub-Section mandates specifically in respect to a General Meeting being adjourned with the consensus arrived at by the majority of the shareholders present. It is however relevant to note that Section 33 do not stipulate anything as regards the Quorum. It only stipulates that the Meeting of the General Assembly could be adjourned with the consent of the majority of the members present. The second paragraph of Section 33(4) 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. This aspect is similar to the contents of Section 34(5) of the Act of 2007 which this Court would deal with subsequently in the instant judgment.

18. Now, coming to Section 34 of the Act of 2007, 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 had not started inasmuch as for starting the Meeting, there is a requirement of the Quorum. Further, if within one hour from the time fixed for the meeting, there is no quorum, the meeting by virtue of Section 34(2) of the Act of 2007 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) of the Act of 2007, the meeting of the General Assembly sans a quorum being present stands 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 Act of 2007. At this stage, it is relevant to observe that a meeting of the General Assembly is called by the Board under Section 32 of the Act of 2007 and as such by operation of law, the meeting of General Assembly called under Section 32 of the Act of 2007 is not dissolved. 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. Now, coming to the proviso to Section 34(2) of the Act of 2007, it would be seen that a Special General Assembly so requisitioned in terms with Section 33(1) and Section 33(2) of the Act of 2007 would stand dissolved.

19. On the other hand, a perusal of 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 had 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 34(2) with Section 34(3) of the Act of 2007 in as much as the term "subsequent meeting" can only be found in Section 34(3) which however do not find place in Section 34(2) of the said Act of 2007. The difference in treatment to the meeting adjourned under Section 34(3) vis-à-vis Section 34(2) can also be seen from a reading of Section 34(4) and 34(5) of the said Act of 2007 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.

20. Section 34(5) of the Act of 2007 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. However, Section 34(2)

statutorily mandates that the meeting is adjourned to the same day of the next week at the same time or place automatically by operation of law, if the Chairman of the Meeting otherwise does not extend the period of notice as stipulated in Section 34(2) of the Act of 2007. Therefore, Section 34(5) of the Act of 2007 has to be construed to be in relation to Section 34(3) and in respect to subsequent meetings only.

21. In the backdrop of the above, what can be culled out is that by virtue of Section 34(1) of the Act of 2007, 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%. Section 34(2) of the Act of 2007 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 unless the Chairman extends the period to a later date but not later than 15 days or as may be specified in the byelaws of the Society.

22. It is also interesting to note that Section 34(2) of the Act of 2007 though stipulates that the Chairman of the meeting can adjourn the meeting to a later date than statutorily mandated of seven days but the Act of 2007 is silent as to how a Chairman of a meeting is appointed. However, a perusal of Section 43 of the Act of 2007 would show that the terms, "President" and "Chairman" have been used interchangeably. Be that as it may, Section 34 (3) of the Act as observed earlier arises in a situation where the meeting had commenced. It is also seen that the Presiding Authority only has the power to adjourn unlike Section 34(2) of the Act of 2007 where the Chairman of the

Meeting has the power to extend the period beyond 7 (seven) days. If this Court takes into account Section 34 (7) of the Act of 2007, 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 of 2007, it would 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. Therefore, from the above, it would show that the legislature clearly distinguished the status of a meeting coming within the ambit of Section 34(2) with that of a meeting in Section 34(3) of the Act of 2007. This aspect would also be clear that by virtue of Section 34(5) of the Act of 2007 whereby 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 at the meeting by the Presiding Authority 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. The use of the expression "to such time or date" in Section 34(3) of the Act of 2007 further shows that the subsequent meeting can be held on the same date at a different time which shall be notified in the notice Board. In contradistinction to the said provision,

Section 34(2) of the Act of 2007 stipulates next week.

23. In the backdrop of the above scheme envisaged under Section 34(3) of the Act of 2007, it can also 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 Act of 2007, there is no requirement of the quorum. The legislative intent is clear to give an additional opportunity to the shareholders of the Cooperative Society to remain present in the subsequent meeting. However, if the shareholders of the Cooperative Society fail to remain present, the legislative intent is also 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 a meeting adjourned due to no initial quorum and a meeting adjourned after initial quorum. In a meeting adjourned due to no initial quorum, there has to be compliance to Section 34(1) of the Act of 2007 whereas in subsequent meeting there is no necessity for a quorum in terms with Section 34(1) of the said Act of 2007 provided the first part of Section 34(3) and Section 34(5) of the Act of 2007 is complied with.

24. Therefore, from the above analysis, it would be crystal clear that in a meeting held pursuant to adjournment under Section 34(2) of the Act of 2007, 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 whichever is higher.

25. In the backdrop of the above analysis and proposition of law laid

down, let this Court consider the submission of Mr. K. N. Choudhury, the learned Senior counsel on merits. In the opinion of this Court, the said submission made to the effect that the meeting adjourned under Section 34(2) and 34(3) of the Act of 2007 to be given the same status, is misconceived inasmuch as already held supra, there is no meeting of the General Assembly if within the time stipulated under Section 34(2) of the Act of 2007, there is no quorum. As such, the said meeting would not come within the ambit of an adjourned meeting of the General Assembly or can by any standards be said to be a meeting of the General Assembly. Further to that as observed supra, as the meeting was called by the Board in terms with Section 32 of the Act of 2007, the said meeting which otherwise ought to have been dissolved does not get dissolved and stands adjourned by operation of law to the same day of the next week at the same time and venue. On the other hand, the proviso to Section 34(2) of the Act of 2007 is in relation to a Special General Meeting held in terms with the requisition made under Section 33(1) and Section 33(2) of the Act of 2007 which gets dissolved. Therefore, a meeting adjourned due to lack of initial quorum under no circumstances can be equated to an adjourned meeting or a subsequent meeting. Now coming to the meeting referred to in Sub-Section (3) of Section 34 of the Act of 2007 is a meeting of the General Assembly as there was initial quorum and as such the legislature in its wisdom had mentioned the meeting so adjourned by Presiding Authority as a subsequent meeting which means a continuation of the previous meeting. Therefore, the contention of the learned Senior counsel for the Private Respondents as observed earlier is misconceived.

26. Now, coming to the judgment referred to by the learned Senior

counsel i.e. the judgment rendered in ***Nalin Chandra Hazarika (supra)***, the same was rendered not only on a different issue involved but also in respect to Rule 24 of the Assam Cooperative Societies Rules, 1953. The facts in the case of ***Nalin Chandra Hazarika (supra)*** was that for the cooperative year 1991-1992, the AGM was required to be held in the year 1991. In the said Cooperative Society, 1/3rd of the members were to retire out of the 18 members and their places were to be filled up by the election scheduled to be on 28.05.1992. However, the Government by issuing a notification under Section 92 of the Assam Co-operative Societies Act, 1949 exempted all co-operative societies from the operation of Section 32(1) and 32(2) of the Assam Cooperative Societies Act, 1949 until 31.07.1992. The said period was further extended by the Government till 31.10.1992. The Cooperative Society in the said case convened its Annual General Meeting on 27.10.1992 by taking necessary steps. The meeting was held on that date but the business could not be transacted in the absence of the quorum and it was announced that the adjourned meeting would be held on 06.11.1992 as per Rule 24(iii) of the Assam Cooperative Societies Rules, 1953. Thereupon, the adjourned meeting was held on 06.11.1992. Five new Directors were elected as against 6 (six) vacancies and the proceedings were submitted before the Registrar for approval. Vide an order dated 13.11.1992, the Registrar declared the Administrative Council to be dissolved under Section 32(4) of the Assam Cooperative Societies Act, 1949 and appointed an officer to manage the affairs of the society till the new body was elected or formed. The said order of the Registrar was put to challenge in the said writ petition. The Division Bench of this Court in its opinion more particularly at Paragraph No.8 opined that the meeting held on 06.11.1992 was a continuation of the earlier

meeting dated 27.10.1992 and as such held that the order dated 13.11.1992 by which the Registrar had dissolved the administrative council under Section 32(4) of the Act was legally unsustainable. Therefore, the issue involved in the said proceedings was as to whether the administrative council of the Cooperative Society had abided by the requirement of Section 32(2) of the Assam Cooperative Societies Act, 1949 which stipulates that a meeting should be held within 60 days from the date of expiry of the preceding cooperative year or such extension so granted. The learned Division Bench held that as the administrative council of the Society could not hold the AGM on 27.10.1992 due to lack of quorum and the meeting held on 06.11.1992 was a continuation of the meeting held on 27.10.1992, the Registrar could not have dissolved the administrative council under Section 32(4) of the Assam Cooperative Societies Act, 1949. The ratio decidendi therefore to the said judgment is that the Registrar was not justified in passing the order dated 13.11.1992 whereby the administrative council was dissolved under Section 32(4) of the Assam Cooperative Societies Act, 1949, when a meeting was duly held subsequently on 06.11.1992. It is relevant to take note of that the issue as to whether in the meeting dated 06.11.1992, there was quorum or not which is otherwise the pivotal question involved in the instant case was not in issue. At this stage, this Court finds it relevant to take into account a recent judgment of the Supreme Court in the case of ***Secundrabad Club etc. Vs. C.I.T.-V etc.*** *reported in* ***(2023) SCC Online SC 1004*** wherein the Supreme Court observed that only the ratio decidendi of the judgment is binding as a precedent. The Supreme Court explained in Paragraph 68 to 77, what is binding in a judgment. It was observed that what is binding is the principle underlying a decision which must be discerned in the context of the

question(s) involved in that case from which the decision takes its colour. Paragraph Nos. 68 to 77 of the judgment in the case of ***Secundrabad Club (supra)*** are quoted hereinbelow:

> "***68.*** *It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. In B. Shama Rao v. Union Territory of Pondicherry, AIR 1967 SC 1480, it has been observed that a decision is binding not because of its conclusion but with regard to its ratio and the principle laid down therein. In this context, reference could also be made to Quinn v. Leathem, [1901] A.C. 495 (HL), wherein it was observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found. In other words, a case is only an authority for what it actually decides.*
>
> ***69.*** *Reliance could also be placed on the dissenting judgment of A.P. Sen, J. in Dalbir Singh v. State of Punjab, (1979) 3 SCC 745, wherein his Lordship observed that a decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents, every decision contains three basic ingredients:*
>
> *(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;*
>
> *(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and*

(iii) judgment based on the combined effect of (i) and (ii) above.

70. *For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subjectmatter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.*

71. *In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes, [1959] A.C. 743, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. A judgment is not binding (except directly on the parties to the lis themselves), nor are the findings of fact. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case.*

72. *The legal principles guiding the decision in a case is the basis for a binding precedent for a subsequent case, apart from being a decision which binds the parties to the case. Thus, the principle underlying the decision would be binding as a precedent for a subsequent case. Therefore, while applying a decision to a later case, the court dealing with it has to carefully ascertain the principle laid down in the previous decision. A decision in a case takes its flavour from the facts of the case and the question of law involved and decided. However, a decision which is not express and is neither founded on any reason nor proceeds on a consideration of the issue cannot be*

deemed to be law declared, so as to have a binding effect as is contemplated under Article 141, vide State of Uttar Pradesh v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139. Article 141 of the Constitution states that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. All courts in India, therefore, are bound to follow the decisions of Supreme Court. This principle is an aspect of judicial discipline.

73. *If a decision is on the basis of reasons stated in the decision or judgment, only the ratio decidendi is binding. The ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case. It is the ratio decidendi which forms a precedent and not the final order in the judgment, vide Sanjay Singh v. Uttar Pradesh Public Service Commission, Allahabad, (2007) 3 SCC 720. Therefore, the decision applicable only to the facts of the case cannot be treated as a binding precedent.*

74. *The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to individuals as to the consequences of transactions forming part of daily affairs. Thus, what is binding in terms of Article 141 of the Constitution is the ratio of the judgment and as already noted, the ratio decidendi of a judgment is the reason assigned in support of the conclusion. The reasoning of a judgment can be discerned only upon reading of a judgment in its entirety and the same has to be culled out thereafter. The ratio of the case has to be deduced from the facts involved in the case and the particular provision(s) of law which the court has applied or interpreted and the decision has to be read in the context of the particular statutory provisions involved in the matter. Thus, an order made merely to dispose of the case cannot have the value or effect of a binding precedent.*

75. *What is binding, therefore, is the principle underlying a decision which must be discerned in the context of the question(s) involved in that case from*

which the decision takes its colour. In a subsequent case, a decision cannot be relied upon in support of a proposition that it did not decide. Therefore, the context or the question, while considering which, a judgment has been rendered assumes significance.

76. *As against the ratio decidendi of a judgment, an obiter dictum is an observation by a court on a legal question which may not be necessary for the decision pronounced by the court. However, the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the Court in a case. Although the obiter dictum of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.*

77. *In the context of understanding a judgment, it is well settled that the words used in a judgment are not to be interpreted as those of a statute. This is because the words used in a judgment should be rendered and understood contextually and are not intended to be taken literally. Further, a decision is not an authority for what can be read into it by implication or by assigning an assumed intention of the judges and inferring from it a proposition of law which the judges have not specifically or expressly laid down in the pronouncement. In other words, the decision is an authority for what is specifically decides and not what can logically be deduced therefrom."*

27. Applying the above principles as settled by the Supreme Court and taking into consideration that in the case of ***Nalin Chandra Hazarika (supra),*** the issue involved was only as regards the action of the Registrar to dissolve the administrative council for not holding the meeting on or before 31.10.1992 and the question of quorum in the meeting dated 06.11.1992 was not in issue. The said judgment cannot be said to be binding upon this Court. The observation made in paragraph No.8 by the learned Division Bench of this Court at best can be said to be an obiter dictum which would not be binding

in the issue involved in the instant case. Be that as it may, this Court also finds it relevant to observe that Rule 24 of the Assam Cooperative Societies Rules, 1953 cannot be said to be para materia to Section 34 of the Act of 2007 wherein in Section 34(3), 34(4) and 34(5) there is a concept of subsequent meetings.

28. In view of the above position of law, this Court is of the opinion the meeting held on 18.09.2020 which was a meeting in terms with Section 34(2) of the Act of 2007 could not have been held without having the minimum quorum of 10% of the shareholders. Under such circumstances, this Court taking into account that only 101 shareholders were present out of 4265 shareholders as on 31.03.2020 opines that the said meeting held on 18.09.2020 cannot be said to be a meeting of the General Assembly of the Bank. Consequently, the said meeting dated 18.09.2020, the resolution so adopted therein as well as the approval so given by the Assistant Registrar of Cooperative Societies are all bad in law and accordingly stands set aside and quashed.

29. This Court further finds it relevant to observe that with the setting aside of the Annual General Meeting held on 18.09.2020, the Board of Directors who were elected therein are also set aside. The consequential effect thereupon would be that no Annual General Meeting was held on 18.09.2020. The natural corollary would be the automatic application of Section 39 of the Act of 2007 by which the earlier Board of Directors prior to 18.09.2020 stands dissolved by operation of law. Even otherwise also as per Section 31 of the Act of 2007 as the tenure of the earlier Board of Directors (prior to 18.09.2020) had already expired, there would be no Board of

Directors. Under such circumstances, the Registrar of the Cooperative Societies who have been empowered under Section 41 of the Act of 2007 has to step in by exercising the powers under Section 41(6) of the Act of 2007 by appointing an Officer of the Cooperation Department for constitution of the Board within 90 days from the date of such appointment and all the functions of the Board has also to be performed by the said Officer during the period of 90 days at the cost of the Bank. Accordingly, this Court therefore directs the Registrar of Cooperative Societies to take necessary actions in terms with Section 41(6) of the Act of 2007 and pass consequential directions.

30. Mr. K. N. Choudhury, the learned Senior counsel appearing on behalf of the Private Respondents submitted that there was no fault on the part of the Private Respondents and they were under the bonafide belief that in the adjourned meeting, there was no requirement of a quorum. The learned Senior counsel therefore submits that the disqualifications as set out under Section 40 of the Act of 2007 should not be made applicable to the Private Respondents. This Court had given due consideration to the said submission and is of the opinion that as the Respondent Cooperation Department had approved the resolution so adopted in the Annual General Meeting held on 18.09.2020 and it was on account of an incorrect interpretation of Section 34, the Annual General Meeting was held on 18.09.2020, the disqualification as set out under Section 40 ought not to be made applicable insofar as the members of the erstwhile Board of Directors of the Respondent Bank prior to 18.09.2020.

31. Accordingly, the instant writ petition therefore stands disposed of with the following observations and directions.

(i) The Annual General Meeting held on 18.09.2020, the resolution so adopted therein, the election so held as well as the approval so given by the Cooperation Department to the resolutions so adopted in the Annual General Meeting held on 18.09.2020 are all set aside and quashed.

(ii) The Registrar of Cooperative Societies is directed to take action in terms with Section 41(6) of the Act of 2007 in the manner as directed hereinabove.

(iii) The Private Respondents herein who were in the erstwhile Board of Directors of the Bank prior to 18.09.2020 shall not be disqualified in terms with provisions of Section 40 of the Act of 2007.

JUDGE

Comparing Assistant