

GAHC010002142023



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

**Case No. : WP(C)/177/2023**

DULAL CHANDRA SHILL AND 10 ORS  
S/O- LATE HARIMOHAN SHILL, R/O- LANKA TOWN, WARD NO.7, SHILL  
BASTI, P.O- LANKA, DIST- HOJAI, ASSAM

2: ADHIR DUTTA  
S/O- LATE NORESH CH DUTTA  
R/O- LANKA TOWN  
WARD NO. 10  
N AREA  
P.O- LANKA  
DIST- HOJAI  
ASSAM

3: MANJIT CHATTARJEE  
S/O- LATE MOTILAL CHATTARJEE  
R/O- LANKA TOWN  
WARD NO. 2  
RUP NAGAR  
P.O- LANKA  
DIST- HOJAI  
ASSAM

4: MANISH LAL DHAR  
S/O- LATE KANOJ KANTI DHAR  
R/O- LANKA TOWN  
WARD NO.9  
SANTI PARA  
P.O- LANKA  
DIST- HOJAI  
ASSAM

5: DILIP DUTTA  
S/O- SRI HORE KRISHNA DUTTA  
R/O- LANKA TOWN

WARD NO.3  
LANKA POTTY  
P.O- LANKA  
DIST- HOJAI  
ASSAM

6: MUKUT DEV GOSWAMI  
S/O- LATE CHANDRADHAJ DEV GOSWAMI  
R/O- LANKA TOWN  
WARD NO.2  
L  
P ROAD  
P.O- LANKA  
DIST- HOJAI  
ASSAM

7: MD. KASEM ALI  
S/O- LATE ALIM UDDIN  
R/O- PANCHALI NO.2  
P.O- LANKA  
DIST- HOJAI  
ASSAM

8: NALINI BALAL DUTTA  
W/O- LATE MODAN MOHAN DUTTA  
R/O- LANKA TOWN  
WARD NO.10  
L P ROAD  
P.O- LANKA  
DIST- HOJAI  
ASSAM

9: ARATI GHOSH  
W/O- LATE NOGANDRA CH GHOSH  
R/O- LANKA TOWN  
TAMULI ROAD  
P.O- LANKA  
DIST- HOJAI  
ASSAM

10: SAMARJIT DAS  
S/O- SRI KHUKAN DAS  
R/O- AAMPUKHURI GAON  
L P ROAD  
P.O- LANKA  
DIST- HOJAI  
ASSAM

11: BABUL DEY  
S/O- LATE DHIRENDRA DEY  
R/O- LANKA TOWN  
WARD NO.1  
P.O- LANKA  
DIST- HOJAI  
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
COOPERATION DEPARTMENT, DISPUR, GHY- 06

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

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES  
GUWAHATI ZONE  
BHANGAGARH  
GUWAHATI- 05

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES  
HOJAI  
P.O- LANKA  
DIST- HOJAI  
ASSAM  
PIN- 782446

5:THE SECRETARY  
LANKA COOPERATIVE MARKETING AND PROCESSING SOCIETY LTD  
LANKA  
DIST- HOJAI  
ASSAM  
PIN- 78244

**Advocate for the Petitioner : DR. B AHMED**

**Advocate for the Respondent : SC, CO OP**

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER****Date : 18.01.2023**

Heard Mr. N. Haque, learned counsel for the petitioners and Mr. S.K. Talukdar, learned standing counsel for the Cooperative Department appearing for respondent nos. 1 to 4.

2. The case of the petitioners is that they were elected as Board of Directors of Lanka Cooperative Marketing & Processing Society Ltd. in the year 2016. It is projected that the Assistant Registrar of Cooperative Society, Hojai had issued an election notification dated 09.09.2022 followed by appointment of Returning Officer and Asstt. Returning Officer. However, in course of the said election process, the Asstt. Registrar of Cooperative Society, Hojai (respondent no.4) had received representation dated 12.09.2022 by 11 persons who were shareholders of the society and had alleged anomalies in the preparation of voter list. Accordingly, by the impugned order dated 16.09.2022, while the respondent no.4 directed an investigation to be made with regard to the preparation and finalization of member list of the society, the election notification dated 09.09.2022 as well as notification for appointment of Returning Officer and Asstt. Returning Officer dated 09.09.2022 were both cancelled.

3. Accordingly, the president of Lanka Cooperative Marketing & Processing Society Ltd. had submitted a representation dated 28.09.2022 to the Registrar of Cooperative Societies, Assam (respondent no.2) with a prayer for granting eligibility for holding the AGM and elections for the period of 2021-22. However, the Zonal Joint Registrar Cooperative Societies by another impugned order dated 17.10.2022 held the Board of Directors of Lanka Cooperative

Marketing & Processing Society Ltd. to stand automatically dissolved under Section 39 for violation of the provision of Section 32 of the Assam Cooperative Societies Act, 2007 and accordingly, the Senior Inspector/ Auditor of Cooperative Society of the office of respondent no.4 was appointed to perform all the functions of the Board and to convene AGM/ election of the Society and also to constitute a Board of Directors within 90 days.

4. The learned counsel for the petitioners has submitted that one of the consequences of the Board of Directors of being dissolved for not holding the AGM within stipulated time under Section 39 of the Act would be to the effect that under Sub-Section (4) of Section 40 of the said Act, the Directors of the Society would be debarred from contesting further election for a period of five years from the date on which such member of the society cease to be a Director and that under Section 41(8) of the said Act, the Director would not be eligible for re-election.

5. In this writ petition, it is the projected case of the petitioner that they had taken steps for holding of the AGM, but on a complaint made by 11 members of the Society, the respondent no. 4 had recalled/ cancelled the election notification dated 09.09.2022 as well as appointment of Returning officer and Asstt. Returning Officer dated 09.09.2022. Under such circumstances, the Court finds that the petitioners had legal disability in holding the elections for the Board of Directors of the Society in reference.

6. On a pointed query of the Court to the learned standing counsel for the respondent as to what was the legal position relating to adjournment of elections, the learned standing counsel for the respondent has referred to the provisions of Rule 19 of the Assam Cooperative Societies Election Rules, 2019.

7. On a perusal of the provisions of Rule 19 of the Assam Cooperative Societies Election Rules, 2019 as well as other provision of Assam Cooperative Societies Act, 2007, it prima- facie appears that the matter relating to elections of the Board of Directors of Cooperative Society is to be under the control of Registrar of Cooperative Society. As per clause- (a) of Rule 19 of the Assam Cooperative Societies Election Rules, 2019, the Returning Officer had a power to adjourn the poll/ election and give a report to the Registrar of Cooperative Society for arrangement of departmental officer(s) to manage the affairs of the society, if necessary, and that the Retuning officer had a power to fix the next date for the elections. However, in the present case in hand, the notification for holding elections was recalled. Therefore, the Court finds sufficient force in the argument made by the learned counsel for the petitioner that the petitioners were prevented by legal impediment in holding the elections as the process of election was cancelled by the respondent no.4.

8. Under the aforesaid factual matrix, the Court finds sufficient force in the contention of the learned counsel for the petitioners that the effect of Section 40(4) and 41(8) of the Assam Cooperative Societies Act, 2007 ought not to be made applicable to the present petitioners. Having arrived at such prima facie view, the Court is of the considered opinion that instead of keeping the matter pending for adjudication before the Court, it would be appropriate to relegate the petitioner to approach the Registrar Cooperative Society, Assam (respondent no.2) by filing a representation preferably within 7(seven) days from today. It is provided that on receipt of such representation, the respondent no.2 shall examine as to whether the petitioners can be exempted from the purview of Section 40(4) and 41(8) of the Assam Cooperative Societies Act, 2007 to save them from debarment from contesting the elections.

9. Accordingly, the respondent no.2 shall pass a reasoned order within a period of 2(two) weeks from the date of receipt of representation, if necessary, by hearing all the stakeholders. It is provided that the eligibility of the petitioners to participate in further elections shall be subject to the orders that respondent no. 2 would pass.

10. In view of the nature of order passed, issuance of notice on respondent no. 5 i.e. the Secretary, Lanka Cooperative Marketing & Processing Society Ltd. is exempted as he would not be the party affected by this order.

11. Accordingly, this writ petition stands disposed of to the extent as indicated above.

**JUDGE**

**Comparing Assistant**