

GAHC010013512016



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

Case No. : WP(C)/2376/2016

THE JANASAKTI BYABASAI SAMABAI SAMITTEE LTD.
JANASHAKTI BHAVAN, JYOTISHREE NAGAR, LAKHRA ROAD, P.O.
UDALBAKRA, P.S. FATASHIL AMBARI, GHY-34, REP. BY ITS CHAIRMAN SRI
DILIP GOGOI

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE COMMISSIONER AND SECY., CO-OP. DEPTT., GOVT. OF
ASSAM, DISPUR, GHY-6

2:THE REGISTRAR OF CO-OP. SOCIETIES
ASSAM
KHANAPARA
GHY-22

3:DISTRICT DY. REGISTRAR OF CO-OP. SOCIETIES
KAMRUP
BHANGAGARH
GHY-5

4:THE ASSTT. REGISTRAR OF CO-OP. SOCIETIES
BHANGAGARH
GHY-5

5:Amzat Ali Khan

S/o Late Samesh Ali Khan
Resident of Kotbari
P.O. Guwahati-35
Assam.

6:Sri Deepak Kr. Koch

S/o Late Karna Mohan Koch
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

7:Smt. Atifa Khan

W/o Late Nuimuddin Khan
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

8:Md. Shahajamal

S/o Late Adam Ali
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam

9:Sri Dinesh Ch. Sarma

S/o Late Dhireswar Sarma
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

10:Sri Ram Ch. Bhakat

S/o Bal Ch. Bhakat
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

11:Md. Ibrahim Ali

S/o Late Jumrati Ali
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

12:Ismail Hussain

S/o Late Ibrahim Seikh
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

13:Sri Bankim Talukdar

S/o Late Rajat Talukdar
Resident of Saukuchi
P.O. Saukuchi
P.S. Beltola
Guwahati-34
Kamrup M
Assam.

14:Nazir Hussain

S/o Late Ibrahim Sheikh
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

15:Md. Abdul Aziz

S/o Late Anowar Hussain
Resident of Borsojai
Guwahati-28
Kamrup M
Assam.

16:Babul Ali

S/o Late Naser Mohmad
Resident of Jyotishree Nagar
P.O. Udalbakra
P.S. Dispur
Guwahati-34
Kamrup M
Assam.

17:Abul Hussain Bhuyan

S/o Late Kasim Uddin Bhuyan
Resident of Kotabari
Guwahati-35
Kamrup M
Assam.

18:Aftab Hussain

S/o Late Fauzir Ali
Resident of Birubari
P.O. Gopinath Nagar
Guwahati-16
Kamrup M
Assa

Advocate for the Petitioner : MR.B CHAKRABORTY

Advocate for the Respondent : MR.A SARMA

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23.02.2023

Heard Shri B. Chakraborty, learned counsel for the petitioner.

The petitioner is a Co-operative Society which was registered in the year 1994. Alleging certain anomalies, a petition was filed on 01.10.2014 by some erstwhile members against the management of the Society pursuant to which a proceeding was initiated by issuing Show Cause Notice. Thereafter, enquiry was

conducted and vide the impugned order dated 08.03.2016, the following directions were passed:

1. Cancel the primary membership of all the members residing outside the area of operation of the society including the membership of members/ Directors who were illegally inducted as members of the society without the approval of the Annual General Meeting of the society dated 21.04.2013 and 15.06.2014, in violation of Clause 5 (3) and 7 (5) of the Bye-laws of the society.
2. To enroll the shareholders, who were terminated from the membership of the society on the ground of default giving them scope to repay the money or to initiate fresh Bakijai proceeding for recovery of dues.
3. To stop taking deposit from members unless the fund is utilized for enhancing the trading business of the society.

Shri Chakraborty, the learned counsel for the petitioner submits that though the challenge was on merits, due to efflux of time and the development which has taken place in the meantime, the relief claimed can be moulded because of the following reasons.

With regard to the direction for cancellation of primary membership of the members residing outside the area of operation of the Society, the same has been taken care of by the amendment in the statute in Section 6 (3) done vide the Gazette Notification dated 29.01.2022 whereby the offending part of Section 6 (3) has been deleted.

As regards, the second direction to enroll the shareholders who were terminated from the membership, the learned counsel submits that the direction itself is a conditional one which the petitioner is ready and willing to comply with subject to performance of the reciprocal duties casted upon the defaulting members.

As regards the third direction, Shri Chakraborty, the learned counsel for the petitioner submits that the petitioner's society has been categorized as others. The said position has been clarified by Shri Rajkhuwa, the learned Standing Counsel, Cooperation Department that the implication is that the society in question should not indulge in banking activities which Shri Chakraborty, the learned counsel has accepted.

Shri Chakraborty, the learned counsel for the petitioner further submits that while issuing notice of motion, vide order dated 07.04.2016, so far as the third direction is concerned, though the interim order is denied, there is no absolute bar placed on collection of deposits from the Society members. The learned counsel submits that the said direction may be continued and made a part of the final orders.

The submission made by Shri Chakraborty, the learned counsel is accepted in principle by Shri Rajkhuwa, the learned Standing Counsel, Cooperation Department.

In view of the above, writ petition stands disposed of with the observation made above.

JUDGE

Comparing Assistant