

GAHC010015942023



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

**Case No. : WP(C)/395/2023**

ABIDUR RAHMAN MAZUMDAR AND 4 ORS  
S/O- LT. MANTASIR ALI MAZUMDAR, VILL- BIDROHIPARA, P.O. HATIKHAL  
BAZAR, DIST.- CACHAR, ASSAM

2: SAHIDUR RAHMAN MAZUMDAR  
S/O- FAIJUR RAHMAN MAZUMDAR  
VILL- BIDROHIPARA  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM

3: MASUK AHMED LASKAR  
S/O- AKBAR ALI LASKAR  
VILL- KACHUDARAM PT.- IV  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM

4: ALI HUSSAIN LASKAR  
S/O- ABDUL ROSID LASKAR  
VILL- KACHUDARAM PT.-II  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM

5: ALI BAKTH MAZUMDAR  
S/O- LT. ABDUL SAFIK MAZUMDAR  
VILL- BIDROHIPARA  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSA

VERSUS

THE STATE OF ASSAM AND 16 ORS  
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT.  
OF COOPERATION AND CONSUMER AFFAIRS, DISPUR, GHY-06

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

3: THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES  
SILCHAR ZONE  
SILCHAR

4: ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES  
SILCHAR CACHAR

5: THE SECRETARY  
MANGALPUR BOALIHAWAR COOPERATIVE SOCIETY LTD.  
KOCHUDARAM  
VILL- DAKHIN MOHANPUR PART-V  
P.O. KOCHUDARAM  
DIST.- CACHAR

6: BADRUL ISLAM LASKAR  
S/O- LT. NAMOR ALI  
VILL- BOALI  
P.O. KACHUDARAM  
DIST.- CACHAR  
ASSAM  
PIN- 788119

7: AJIM UDDIN MAZUMDER  
S/O- LT. SAIFUL BARI MAZUMDAR  
VILL- BIDROHIPAR  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM  
PIN- 788116

8: SALIM UDDIN MAZUMDER  
S/O- LT. INTAJ ALI MAZUMDAR  
VILL- KACHUDARAM PART-IV  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM  
PIN- 788116

9: JAKIR HUSSAIN LASKAR

S/O- LT. ARJAN ALI LASKAR  
VILL- SUNDARI PART-II  
P.O. SUNDARI PART-II  
B.O.  
DIST.- CACHAR  
ASSAM  
PIN- 788116

10:JAHARUL ISLAM LASKAR  
S/O- LT. NAMAN ALI  
VILL- BOALI  
P.O. BOALI  
DIST.- CACHAR  
ASSAM  
PIN- 788099

11:HAFIZ ABDUL HOQUE  
S/O- LT. TASADDAR ALI  
VILL- BHAIKANDI PART-II  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM  
PIN- 788116

12:SAHA ALOM LASKAR  
S/O- LT. TAJ UDDIN LASKAR  
VILL- DAKSHIN MOHANPUR PART-V  
P.O. KACHUDARAM  
DIST.- CACHAR  
ASSAM  
PIN- 788119

13:MAJAMMIL ALI  
S/O- LT. SUNA MIA  
VILL- DAKSHIN MOHANPUR PART-V  
P.O. KACHUDARAM  
DIST.- CACHAR  
ASSAM  
PIN- 788119

14:KABIR HUSSAIN LASKAR  
S/O- LT. MAYUB ALI  
VILL- KACHUDARAM PART-IV  
P.O. KACHUDARAM  
DIST.- CACHAR  
ASSAM  
PIN- 788119

15: NAIMUR RAHMAN LASKAR  
S/O- LT. MAJIBUR RAHMAN LASKAR  
VILL- KACHUDARAM PART-III  
P.O. KACHUDARAM  
DIST.- CACHAR  
ASSAM  
PIN- 788119

16: AINUL HOQUE AHMED  
S/O- LT. YAKUB ALI  
VILL- NUTAN KANCHANPUR  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM  
PIN- 788116

17: ATA MAZUMDER  
S/O- LT. ABDUL SAHID  
VILL- BIDROHIPARA  
P.O. HATIKHAL BAZAR  
DIST.- CACHAR  
ASSAM  
PIN- 78811

**Advocate for the Petitioner : MR M J QUADIR**

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

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**25.01.2023**

Heard Mr. M.J. Quadir, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department for the respondent nos. 1 – 4.

2. Considering the nature of the disputes raised in this writ petition, this Court is of the view that the writ petition can be disposed of at the motion stage itself without issuing of notices to the respondent nos. 6 – 17.

3. The petitioners, 5 [five] in nos., have approached this Court by this writ petition under Article 226 of the Constitution of India alleging irregularities/illegalities in the process to be culminating in the Annual General Meeting [AGM]/Election of the registered co-operative society named M/s Mangalpur Bowalihawar Co-operative Society, Cachar ['the Society', for short], scheduled on 28.01.2023.

4. The case projected by the petitioners, 5 [five] in nos., in a nutshell, is that the petitioners are the stakeholders and members of the Society. The Election to the Board of Directors of the Society was earlier held on 20.11.2016 and after declaration of the results, the first meeting of the Board of Directors of the Society was held on 28.11.2016. Subsequently by order dated 08.12.2017, the respondent no. 4 held that the Chairman and the Vice-Chairman of the Society ceased to be the Chairman and the Vice-Chairman of the Society due to their failure to hold meetings of the Board of Directors of the Society as per the mandate of Section 43[1] of the Assam Co-operative Societies Act, 2007 ['the Act', for short]. Thereafter, a new Chairman was elected on 17.12.2017. The order dated 08.12.2017 passed by the respondent no. 4 was put to challenge and litigations ensued in the form a nos. of writ petitions. It transpires that after 22.09.2018, no AGM was held in respect of the Society and during the said period, an Officer appointed under Section 41[6] of the Act was in charge of the management of the Society. The Officer on Management is still in charge of the affairs of the Society.

5. The main dispute raised herein by the petitioner is in respect of a notice published under the hand of the Officer on Management and the Secretary of the Society on 10.01.2023 whereby the stakeholders have been informed that the AGM/Election of the Society would be held on 28.01.2023 on the basis of the Voters List prepared for the year : 2022-2023.

6. Mr. Quadir, learned counsel for the petitioners has submitted that the afore-mentioned Voters List is full of anomalies and the same appears to be a tampered one. By referring to the Voters List, Mr. Quadir has submitted that the Voters List prepared in the year : 2011 has been converted as the Voters List of 2022-2023 without compliance of the provisions of

Section 26[3] of the Act. By referring the statements made in paragraph 12 of the writ petition, Mr. Quadir has submitted that as a result of such improper Voters List, the names of more than 100 nos. of dead persons have figured in the Voters List of 2022-2023, prepared in respect of Voters inhabiting areas under one Gaon Panchayat area. There are more such dead persons in the Voters List, prepared for other three Gaon Panchayats wherefrom the members of the Society are also drawn. He has further submitted that the petitioners had submitted their nominations to contest in the Election but their nominations had been rejected by the Returning Officer on 18.01.2023 by taking recourse to the provisions Section 40[2] of the Act illegally. As it is an admitted position that no AGM/Election of the Society was held after 22.09.2018, such reason could not have been assigned for rejection of the petitioners' nominations.

7. Mr. Talukdar, learned Standing Counsel, Co-operation Department by referring to different provisions of the Assam Cooperative Societies Election Rules, 2019 ['the Election Rules, 2019', for short], has submitted that the petitioners have an appropriate remedy under Rule 27 of the Assam Cooperative Societies' Election Rules, 2017 ['the Election Rules'] as they can refer the disputes relating to the Election of the Society to the Registrar of Co-operative Society, Assam the said authority being the Election Authority.

8. I have perused the materials brought on record as well as the provisions of the Act and the Election Rules, 2019.

9. The Election Rules, 2019 have been framed in exercise of the powers conferred by Section 131[1] r/w Section 41[3] of the Act. As per Section 26[3] of the Act, the Chief Executive of every cooperative society within twenty days of closure of the previous cooperative year, shall prepare a list of members with the right of vote, and a list of members without the right of vote, valid for the current financial year. The list shall be affixed on the notice board of the Head Office of the cooperative society for information of all members and any member not satisfied with specific instances of inclusion or non-inclusion of members in the lists, may appeal to the Board within ten days from the date of the affixing of the lists on the notice board, for re-examination of the records, and the Board shall within forty days of

closure of the previous cooperative year, review the lists, finalise it, and have it affixed on the notice board of the Head Office of the cooperative society.

10. The learned counsel for the petitioners has canvassed that the petitioners came to know about publication of the Voters List for the year : 2022-2023 only after 18.01.2023. It is submitted by him that the procedure prescribed in Section 26[3] of the Act were blatantly violated while publishing the Voters List : 2022-2023. Had the proper procedure been followed, the petitioners could have availed the opportunity to raise objections as regards inclusion of large nos. of dead persons in the Voters List. Similarly, the name of substantial nos. of persons who are otherwise ineligible, have figured in the Voters List.

11. Whether the Voters List contained names of dead persons or ineligible voters, are questions of fact. The petitioners have made allegations about inclusion of dead persons and/or ineligible persons in the Voters List : 2022-2023 with the further allegation that the Voters List prepared in the year : 2011 has been converted into the Voters List : 2022-2023. The Court is conscious of the fact that the process to be undertaken for AGM/Election is an onerous one and the process was set into motion much earlier with the preparation and publication of the Voters List of the Society. The petitioners have themselves stated that the Society covers area of four Gaon Panchayats and there are more than 2500 stakeholders/members in the Society. By the notice dated 10.01.2023, all these members have already been notified to participate in the AGM/Election, scheduled on 28.01.2023. Having taken into consideration the above fact situation obtaining in the case, this Court is not inclined to interdict the process of AGM/Election, scheduled on 28.01.2023, at this stage. Moreover, the petitioners are found to have approached the Court at the *eleventh hour*.

12. As per Rule 2[f], of the Election Rules, 2019 "Election Authority" means the Registrar of Cooperative Societies or any officer to whom the powers of election are delegated As per Rule 2[g], "Election" means a process in which members vote to elect a person or group of persons in the Annual General Meeting to form a Board in a Co-operative Society. Rule 27 of the Election Rules, 2019 has provided for redressal of dispute. As per Rule 27[a], any dispute relating to election of a Cooperative Society may be submitted within 3 [three] days from the

date of declaration of the results, before the Election Authority. Rule 21[b] has provided that the Election Authority shall make an enquiry upon the dispute on the basis of the relevant records and pass necessary order[s].

13. In view of presence of the aforesaid provisions in Rule 27 of the Election Rules, 2019 for redressal of the dispute, the Court is of the considered view that the petitioners should avail the remedy prescribed in Rule 27 of the Election Rules, 2019 by bringing the disputes, as projected herein, by filing appropriate representation/appeal before the Election Authority i.e. the Registrar of Co-operative Society, Assam within the stipulated time period after declaration of the results of the Election which, according to the notice dated 10.01.2023, is to be declared after the counting to be held on 30.01.2023. In the representation/appeal, the petitioners are at liberty to bring the dispute as regards rejection of their nominations purportedly under Section 40[2] of the Act. In the event such a representation/appeal is filed before the Election Authority in terms of Rule 27 of the Election Rules, 2019 by the petitioners, the Election Authority shall cause necessary enquiry upon the disputes brought before him, on the basis of relevant records and pass necessary order.

14. The Registrar of Election Authority before consideration of the representation/appeal of the petitioners, if any, shall issue notices to all the stakeholders and the representation/appeal thereafter, be disposed of by a speaking order after hearing all such stakeholders. In the above view of the matter, the writ petition is not entertained. Liberty stands reserved for the petitioners to approach the Election Authority in the afore-stated manner, as the remedy under Rule 27 of the Election Rules, 2019 is an efficacious and adequate one. It is observed that in the event the petitioners take recourse to rule 27 of the Election Rules, 2019, the Election Authority shall decide the disputes by following the observation made above, in accordance with law and as per the laid down procedure.

15. Having considered all the aspects projected in this writ petition, it is further observed that the elected members pursuant to declaration of results of the AGM/Election, shall not assume their office till necessary order is passed by the Election Authority on the representation/appeal filed by the petitioners under Rule 27 of the Election Rules, 2019 and

the functioning of such elected members of the Board of Directors of the Society shall abide by the decision of the Election Authority so passed. It is expected that the Election Authority shall make endeavour to pass necessary order on the representation/appeal to be filed by the petitioners as expeditiously as possible, preferably within a period of 1 [one] month from the date of receipt of such representation/appeal, if any, along with a copy of this order.

16. This order disposes of the writ petition. No cost.

**JUDGE**

**Comparing Assistant**