

GAHC010028512023



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

Case No. : WP(C)/750/2023

NIZAM UDDIN BARBHUIYA AND 5 ORS
SON OF LATE ISAK ALI BARBHUIYA,
RESIDENT OF VILLAGE- MOHANPUR PART-III,
POST OFFICE- MOHANPUR,
DISTRICT- HAILAKANDI, ASSAM.

2: SAHAB UDDIN BARBHUIYA
SON OF ABDUL RAZZAK BARBHUIYA

RESIDENT OF VILLAGE- MOHANPUR PART-III

POST OFFICE- MOHANPUR

DISTRICT- HAILAKANDI
ASSAM.

3: ABDUL MATIN BARBHUIYA
SON OF TAHIR ALI BORBHUIYA

RESIDENT OF VILLAGE- MOHANPUR PART-VI

POST OFFICE- MOHANPUR

DISTRICT- HAILAKANDI
ASSAM.

4: MOYNUL HAQUE BARBHUIYA
SON OF LATE ISRAF ALI BARBHUIYA

RESIDENT OF VILLAGE- MOHANPUR PART-II

POST OFFICE- MOHANPUR

DISTRICT- HAILAKANDI

ASSAM.

5: AKODDOS ALI MAZUMDER
SON OF MOYOFOR ALI MAZUMDER

RESIDENT OF VILLAGE- MOHANPUR PART-IV

POST OFFICE- MOHANPUR

DISTRICT- HAILAKANDI
ASSAM.

6: NIZAM UDDIN LASKAR
SON OF SAYAR ALI LASKAR

RESIDENT OF VILLAGE- MOHANPUR PART-V

POST OFFICE- MOHANPUR

DISTRICT- HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM,
CO-OPERATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
CO-OPERATION DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM.

4:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 22.

5:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
HAILAKANDI
ASSAM.

6:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
HAILAKANDI
ASSAM.

7:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : SC, CO OP

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

ORDER

09.02.2023

Heard Shri S. Banik, learned counsel for the petitioners, who are six in numbers.

The projected case of the petitioners is that they were the elected Members and Directors of the M/S Mohanpur Gaon Panchayat Samabay Samity Limited in the district of Hailakandi. The term of the Board was from 2017-18 to 2021-22 and the first AGM was held on 14.09.2017. The term had ultimately come to an end on 13.09.2022. For not being able to hold the AGM/Election in time, there is application of the provisions of Section 40 (4) and 41(8) of the Assam Co-operative Societies Act whereby the petitioners are disqualified from contesting the present Election. The petitioners claimed that due to some genuine reasons including flood and other natural calamities, the Election could not be held in time and therefore, they had approached the Registrar of the Co-operative Societies to pass an order removing the disqualification so that they can contest the Election.

Shri Banik, the learned counsel for the petitioners further submits that the election has been notified on 27.02.2023 and wherein 17.02.2023 is the last date for filing of nomination.

On the other hand, Shri S.K. Talukdar, the learned Standing Counsel, Cooperation Department submits that the legal fiction has been created only to ensure that timely elections and Annual General Meeting is held and in absence of such a rider, an unscrupulous party can take advantage of extending their tenure for an indefinite period.

He further submits that the provisions being a final provision in the nature of a penalty that should not be interfered with.

The learned Standing Counsel has however fairly submitted that he would not oppose in principle if a direction is given to the Registrar for consideration of the representation of the petitioners said to have been filed on 02.02.2023.

After hearing the parties and on perusal of the materials on record, this Court is of the opinion that the instant writ petition can be disposed of at the motion stage itself.

Considering the facts and circumstances, this Court directs the Registrar of Co-operative Societies to take on Board the representation said to have been submitted on 02.02.2023 and pass a speaking order. The said order may be passed prior to the last date of filing of nomination so that in the event a decision is taken in favour of the petitioners, no prejudice is caused to them in submitting their nominations.

This Court however makes it clear that the remand to the Registrar has been made without expressing any opinion on merits of the case and the Registrar will apply his independent mind to the causes shown as to whether

the disqualification should be interfered with or not.

Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant