

GAHC010044162023



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

Case No. : WP(C)/1116/2023

JAHIR UDDIN LASKAR AND 6 ORS.
SON OF LATE ABDUL REZAK LASKAR,
RESIDENT OF VILLAGE ALGAPUR PART-III,
DISTRICT- HAILAKANDI, ASSAM.

2: ANWAR UDDIN LASKAR
SON OF LATE SURMAAN ALI LASKAR
RESIDENT OF VILLAGE- ALGAPUR PART-III
HAILAKANDI
DIST.- HAILAKANDI
ASSAM.

3: HILAL UDDIN BARBHUIYA
SON OF LATE NIMAAR ALI BARBHUIYA
RESIDENT OF VILLAGE- MOHANPUR PART-III
HAILAKANDI
DIST.- HAILAKANDI
ASSAM.

4: LUTFUR RAHMAN BARBHUIYA
S/O- ALAUDDIN BARBHUIYA
RESIDENT OF VILLAGE- MOHANPUR PART-III
HAILAKANDI
DIST.- HAILAKANDI
ASSAM.

5: TAJ UDDIN BARBHUIYA
SON OF LATE KUTUB ALI BARBHUIYA
RESIDENT OF VILLAGE- MOHANPUR PART-III
HAILAKANDI
DIST.- HAILAKANDI
ASSAM.

6: DILWAR HUSSAIN BARBHUIYA
S/O- LATE MOIN UDDIN BARBHUIYA

RESIDENT OF VILLAGE- MOHANPUR PART-III
HAILAKANDI
DIST.- HAILAKANDI
ASSAM.

7: NAZMUL HUSSAIN MAZUMDER
S/O- JALAL UDDIN MAZUMDER
RESIDENT OF VILLAGE- MOHANPUR PART-VI
HAILAKANDI
DIST.- HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM,
CO-OPERATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. 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.

8:THE RETURNING OFFICER
AS PER ORDER BEARING MEMO NO. CCHF.12/73/PT.VI/311 DATED

30.01.2023

I.E.

NURUL HASAN MOZUMDER

SENIOR INSPECTOR/ AUDITOR OF COOPERATIVE SOCIETIES
HAILAKANDI
ASSAM.

9:THE ASSISTANT RETURNING OFFICER

AS PER ORDER BEARING MEMO NO. CCHF.12/73/PT.VI/311 DATED

30.1.2023

I.E.

SUHRAB KHALED MOZUMDER

SENIOR INSPECTOR/ AUDITOR 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

02.03.2023

Heard Shri S. Banik, learned counsel for the petitioners. Also heard Shri SK Talukdar, learned Standing Counsel, Cooperation Department.

2. Further a Caveat has been filed on the subject by 10 incumbents who however are not parties in this writ petition. Shri Banik, learned counsel for the petitioners submits that there is no grievance against the incumbents filing the Caveat as they are not affected parties in the present dispute. Be that as it may, Shri MJ Quadir, learned counsel representing the said incumbents would be heard.

3. The grievance of the petitioners is with regard to an order dated 23.02.2023 passed by the Registrar of Cooperative Societies, Khanapara. By the said order, the Registrar was considering an application dated 20.02.2023 submitted by 15 numbers of share holders of the Mohanpur Sambai Samiti Ltd. along with a letter issued by the

MLA of No. 8 Algapur Constituency. The grievance of those incumbents was cancellation of their nomination papers for the ensuing election. The Registrar of Cooperative Societies while considering the said grievance had also made an observation that till such grievance could be fully redressed, the elections which were scheduled was required to be postponed. It is this part of the impugned order dated 23.02.2023 by which the present petitioners are aggrieved.

4. Shri Banik, learned counsel for the petitioners, who are seven in numbers submits that in the scrutiny when it is normal that nomination of certain candidates would be rejected and that by itself would not be a cause for deferment or postponement of an election. The petitioners, who are the incumbents whose nominations were found to be valid, have prayed for holding the elections in time and adjudication of the dispute raised by incumbents whose nominations have been cancelled cannot stand in the way of timely elections.

5. In this regard, Shri Banik, learned counsel for the petitioners has referred to Rule 27 of the Assam Cooperative Societies Elections Rules, 2019 (hereinafter called the Rules of 2019) which lays down that the dispute redressal mechanism as per which 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 and the Election Authority, shall make an enquiry upon the dispute on the basis of the relevant records and pass necessary orders. The principle of non-interference with election of any kind can be borrowed from Article 329(b) of the Constitution of India which lays down an embargo upon Courts to interfere with any election process of the Parliament or the Assembly as such challenge can only be made by an election petition after the election are over.

6. Shri SK Talukdar, learned Standing Counsel, Cooperation Department was directed to obtain instructions vide an order dated 27.02.2023. The learned Standing Counsel submits that while passing the impugned order, there was some confusion

leading to the observation of postponement of the election which he fairly submits that the same may not be in consonance with the prescription of law. He has also produced a written instruction dated 27.02.2023 issued by the Registrar of Cooperative Societies, Khanpara whereby the stand of the Registrar explaining the situation has put on record.

7. Shri MJ Quadir, learned counsel, who had filed the Caveat, has submitted that if the elections are held before the redressal of the disputes raised by them regarding cancellation of their nominations, prejudice would be caused to them.

8. The aforesaid submission is not sustainable in law in terms of the clear stipulation of the statute holding the fields, more specifically, Rule 27 of the Rules of 2019. Further, the said incumbents have not filed any independent writ petition on the issue and therefore as respondents, they are not entitled to make an independent prayer, that too, contrary to the relief prayed in this writ petition.

9. In view of the aforesaid discussion, the instant writ petition stands allowed by setting aside the observation of the impugned order dated 23.02.2023 regarding deferment of the election of Mohanpur Samabay Samity Limited in the district of Hailakandi. In other words, it is directed that the elections / AGM be held without any further delay.

10. A copy of the communication dated 27.02.2023 is made a part of the records.

JUDGE

Comparing Assistant