

GAHC010104092023



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

Case No. : WP(C)/2684/2023

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 PART-IV

P.O.- HATIKHAL BAZAR

DIST. CACHAR
ASSAM.

4: ALI HUSSAIN LASKAR
S/O- ABDUL ROSID LASKAR

VILL- KACHUDARAM PART-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
ASSAM

VERSUS

THE STATE OF ASSAM AND 17 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM,
DEPARTMENT OF CO-OPERATION, ASSAM,
DISPUR, GUWAHATI-06.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.

3:THE ZONAL ZOINT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR.

4:ASSISTANT REGISTRAR OF COORERATIVE SOCIETIES

SILCHAR ASSAM.

5:THE RETURNING OFFICER
MANGALPUR BOALIHAWAR COOPERATIVE SOCIETY LTD.
KOCHUDARAM

VILL.- DAKHIN MOHANPUR PART-V

P.O.- KOCHUDARAM
DIST. CACHAR.

6:THE SECRETARY
MANGALPUR BOALIHAWAR COOPERATIVE SOCIETY LTD.
KOCHUDARAM

VILL.- DAKHIN MOHANPUR PART-V

P.O.- KOCHUDARAM
DIST. CACHAR.

7:BADRUL ISLAM LASKAR
S/O- LT. NAMOR ALI

VILL- BOALI
P.O.- KACHUDARAM

DIST.- CACHAR
ASSAM

PIN- 788119.

8:AJIM UDDIN MAZUMDER
S/O- LT. SAIFUL BARI MAZUMDAR

VILL.- BIDROHIPAR
P.O.- HATIKHAL BAZAR

DIST.- CACHAR
ASSAM

PIN- 788116.

9:SALIM UDDIN MAZUMDAR
VILL. KACHUDARAM PART-IV

P.O.- HATIKHAL BAZAR

DIST.- CACHAR
ASSAM

PIN- 788116.

10:JAKIR HUSSAIN LASKAR
S/O- LT. ARJAN ALI LASKAR

VILL.- SUNDARI PART-II
P.O. SUNDARI PART-II

DIST. CACHAR
ASSAM

PIN 788116.

11:JAHURUL ISLAM LASKAR
S/O- LT. NAMAN ALI

VILL. BOALI
P.O. BOALI

DIST.-CACHAR
ASSAM

PIN- 788099.

12:HAFIZ ABDUL HOQUE
S/O- LT. TASADDAR ALI

VILL.- BHAURIKANDI PART-II

P.O.- HATIKHAL BAZAR

DIST.- CACHAR
ASSAM

PIN- 788116.

13:SAHA ALOM LASKAR
S/O- LT. TAJ UDDIN LASKAR

VILL- DAKSHIN MOHANPUR PART V

P.O.- KACHUDARAM

DIST.- CACHAR
ASSAM.

PIN- 788119.

14:MAJAMMIL ALI
S/O- LT. SUNA MIA

VILL. DAKSHIN MOHANPUR PART-V

P.O.- KACHUDARAM
DIST.- CACHAR

ASSAM

PIN- 788119.

15:KABIR HUSSAIN LASKAR
S/O- LT. MAYUB ALI

VILL.- KACHUDARAM PART-IV

P.O.- KACHUDARAM
DIST.- CACHAR

ASSAM
PIN- 788119.

16:NAIMUR RAHMAN LASKAR
S/O- LT. MAJIBUR RAHMAN LASKAR

VILL.- KACHUDARAM PART-III

P.O.- KACHUDARAM
DIST.- CACHAR

ASSAM
PIN- 788119.

17:AINUL HOQUE AHMED
S/O- LT. YAKUB ALI
VILL. NATUN KANCHANPUR

P.O.- HATIKHAL BAZAR

DIST- CACHAR
ASSAM
PIN- 788116.

18:ATA MAZUMDER
S/O- LT. ABDUL SAHID

VILL.- BIDROHIPARA

P.O.- HATIKHAL BAZAR

DIST.- CACHAR
ASSAM

PIN- 788116

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : SC, CO OP

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

ORDER

Date : 12.06.2023

Heard Mr. M.J. Quadir, learned counsel for the petitioners. Also heard Mr. S.K. Talukdar, learned standing counsel for the Cooperation Department, representing respondent nos.1 to 5, and Mr. A.M. Barbhuiya, learned counsel for the respondent nos.7, 8, 10, 11, 15, 16, and 18.

2. The petitioners projected themselves to be the shareholder of Mongalpur Bowalihawar Cooperative Society in the district of Cachar. It is also projected that in the AGM/election to be held on 28.01.2023, the nomination of the petitioners were rejected illegally. Accordingly, the petitioners had approached this Court by filing WP(C) 395/2023. This Court by order dated 25.01.2023, disposed of the writ petition with a direction to the petitioners to avail statutory remedy available under Rule 27 of the Assam Cooperative Societies' Election Rules, 2019 ('Election Rules' for short).

3. It is also projected that the AGM/election was adjourned on 28.01.2023 due to lack of quorum, which was subsequently held on 04.02.2023 and the proceeding was approved by the Assistant Registrar of Cooperative Societies, Cachar on 10.02.2023. Challenging the conduct of elections, the petitioners had approached the Registrar of Cooperative Societies on 07.02.2023

and filed an appeal under Rule 27 of the Election Rules. However, the Assistant Registrar of Cooperative Societies, Cachar vide impugned order dated 13.04.2023 has disposed of the appeal without interfering with the AGM/election held on 04.02.2023.

4. The aggrieved petitioners are before this Court by filing this writ petition under Article 226 of the Constitution of India, amongst others, on the ground that the matter was not decided in accordance with Rule 27 of the Election Rules. It is also submitted by the learned counsel for the petitioners that this Court in paragraph 13 of the order dated 25.01.2023, passed in WP(C) 395/2023 had provided that in the event an appeal/representation is filed before the election authority by the petitioners, the said authority shall cause necessary enquiry upon the disputes brought before him on the basis of relevant records and pass necessary orders. It is projected that despite the said observation, a necessary enquiry was not done, which has vitiated the impugned order.

5. The learned standing counsel for the Cooperation Department has submitted that as per instructions received by him, as per Govt. notification vide No. Coop.141/2012/ Pt./3 dated 03.05.2013, the power of election under section 41(1) of the Assam Cooperative Societies Act, 2007 ('2007 Act' for short) is delegated to all Addl. Registrar of Cooperative Societies, Zonal Joint Registrar of Cooperative Societies, District Deputy Registrar of Cooperative Societies & Asstt. Registrar of Cooperative Societies. But, as per Assam Cooperative Societies Election Rules, 2019, the power of Election Authority is vested only with Registrar of Cooperative Societies, Assam and not delegated to any other subordinate officers. Hence, it is submitted that as per the provisions of Rule 27 of the Election Rules, the adjudication of election disputes can only be heard

and disposed of by Registrar of Cooperative Societies, Assam. In this connection, the learned standing counsel for the Cooperation Department has referred to the provisions of section 41(1) read with section 2(sa) of the 2007 Act as well as Rule 27 read with Rule 2(f) of the Election Rules. It is submitted that under the provisions of section 3 sub-section (2) of the 2007 Act, it would be prerogative of the State Govt. to appoint any other person or persons to assist the Registrar by general or special order in writing delegate to any such person or persons all or any of the powers and responsibilities of the Registrar under this Act. Accordingly, it is submitted that it is only the State Govt. who could delegate the power of election authority to any other official of the Registrar of Cooperative Societies to adjudicate election disputes.

6. Per contra, Mr. A.M. Barbhuiya, learned counsel for the private respondents has submitted that the provisions of Rule 3(a) of the Election Rules, which reads as follows:

“3(a) Subject to the superintendence, direction and control of the Registrar of Cooperative Societies, Assam the following officers shall have power to conduct elections as per section 41(1) of the Act, as delegated by the Government from time to time, namely:

- (i) Registrar of Cooperative Societies for State Level Societies;*
- (ii) Joint Registrar of Cooperative Societies for Zone Level Societies;*
- (iii) Deputy Registrar of Cooperative Societies for District Level Societies;*
- (iv) Assistant Registrar of Cooperative Societies for Sub-Divisional Level Societies”*

7. Hence, it is submitted that the Assistant Registrar of Cooperative Societies is a competent authority for sub-divisional level societies for the purpose of conduct of elections as well as the adjudication of election disputes.

It is also submitted that the petitioners had made their complaint before the Registrar of Cooperative Societies, Assam and the Additional Registrar of Cooperative Societies (G), Assam by his forwarding letter under memo no. GPSS.12/2020/125 dated 23.02.2023, had forwarded the said appeal to the Assistant Registrar of Cooperative Societies, Silchar. Hence, it is submitted that there was a proper delegation of power to the Assistant Registrar of Cooperative Societies, Silchar and therefore, there is no infirmity in the said order.

8. At the outset, it may be mentioned that the learned counsel for the petitioners, learned standing counsel for the Cooperation Department, and the learned counsel for the private respondents have no objection for the Court to decide the matter at the motion stage.

9. For the purpose of deciding this matter, it would be appropriate to extract the provisions of section 2(sa), 3 and 41 of the 2007 Act:

“2(sa) "Election Authority" means the Registrar on whom the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a Cooperative society has been vested under sub-section (1) of Section 41;”

* * *

3. The Registrar-

- (1) The State Government may appoint an officer to be the Registrar of Cooperative Societies for the State or any portion of it for the registration, supervisions, assistance, counsel and for the all-round development of the Cooperative movement in the State with such other powers and responsibilities as may be provided under this Act or Rules or Bye—laws framed thereunder.*
- (2) The State Government may also appoint any other person or persons to assist the Registrar and may by general or special order in writing delegate to*

any such person or persons all or any of the powers and responsibilities of the Registrar under this Act.”

* * *

“41. Elections.—

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all election to a Cooperative Society shall vest in the Registrar. It shall be the duty of the Register to prepare the voters list with eligible members to arrange for holding election of Directors, delegates, or representatives to the delegate general body and representative of the society, if fallen vacant.

(2) The election of Directors to a Board shall be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of members of the out-going Board.

(3) Subject to the provisions of the Constitution of India and the provisions of this Act, the State Government may make rules to provide for the procedure and guidelines for the conduct of elections to the Cooperative Societies.

(4) Where a Board fails to arrange for holding election of the Directors or delegates, as the case may be, before the expiry of the term of their office in accordance with the Act and bye laws, all Directors shall cease to be Directors on the expiry of the period as specified in Section 42(1).

(5) The election of Directors and delegates shall take place at the General Meeting called for the purpose.

(6) Where a Board fails to arrange for holding election before the expiry of the term of the Board or delegates or where there are no Directors remaining on the Board, the Registrar shall convene a General Meeting by appointing an Officer of the Cooperative Department for Constitution of the Board within ninety days from the date of such appointment and the officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Society.

(7) The Directors shall hold office for the period for which they were elected and the newly elected Directors shall assume office on the date of expiry of the said period.

(8) The Directors shall not be eligible for re-election, if so specified in the bye-

laws.

(9) Where there are vacancies in the office of the Directors and where there are no sufficient number of Directors to constitute a Quorum for Board meeting, the Board may co-opt maximum three eligible members for constituting quorum or arrange for holding election to fill up the vacancies for the un-expired term of the Board.

(10) Notwithstanding anything contained in this Act, no person shall be eligible to hold; at the same time, office of a President or Vice-President of the Board of more than two Co operative Societies."

10. The Court also finds it appropriate to extract the Rule 2(f), 3 and 27 of the Election Rules:

"2(f) "Election Authority" means the Registrar of Cooperative Societies, or any officer to whom the powers of election are delegated"

* * *

"3. Conduct of Election to Board of Directors of Cooperative Society. –

(a) Subject to the superintendence, direction and control of the Registrar of Cooperative Societies, Assam the following officers shall have power to conduct elections as per section 41 (1) of the Act, as delegated by the Government from time to time, namely :-

(i) Registrar of Cooperative Societies for State Level Societies;

(ii) Joint Registrar of Cooperative Societies tor Zone Level Societies:

(iii) Deputy Registrar of Cooperative Societies for District Level Societies;

(iv) Assistant. Registrar of Cooperative Societies for Sub-Divisional Level Societies;

(b) The election of a Cooperative society, for constitution of the Board of Directors, shall be held in the meeting of General Assembly as per section 29 of the Act if fallen due as per section J 1, 41 and 42 or in a Special General Meeting as per section 33, on such dates as may be notified by the Registrar of Cooperative

Societies, Assam/the Election Authority.

(c) On the notified date, the Annual General Meeting, which inter-alia shall have the election agenda, shall fix the schedule of items for discussion and decision as per

section 30 of the Act between 9:00 AM and 12 Noon.

(d) The Returning Officer shall notify the date and time of vote.

(e) Voting shall commence immediately after deliberations of the Annual General Meeting, but not later than 12 Noon. All eligible members who reach the polling station within the time notified by the Returning Officer, shall be allowed to vote.

(f) The Returning Officer shall arrange for issuance of numbered and signed coupons to members who reach the polling station in time but remain in queue up to 4:00 PM, yet to cast their votes. The coupons shall be issued consecutively from the end of the queue.

(g) The Management shall arrange for sufficient light in the polling premises.

(h) The concerned Chief Executive/ Secretary of the society shall prepare and submit a list of members eligible to vote in the election as per section 26(3) of the Act, to the Registrar/ Election Authority, for countersignature to fulfill the requirement of section 41 (1). The Registrar of Cooperative Societies (RCS) and Joint Registrar of Cooperative Societies (JRCS), Deputy Registrar of Cooperative Societies (DRCS), Assistant Registrar of Cooperative Societies (ARCS) concerned, in exercise of their delegated powers of the Registrar, shall ensure correctness of the voters list, after deleting names of dead voters in consultation with the Registrar or Births and Deaths, incorporation of new voters, removing duplicate names etc. by inviting claims and objections, and comparison with the register of membership etc.

(i) The Election Authority shall arrange for publication of the electoral roll before 30 days of the date of election. Nominations from candidates shall be received 10

days before the election. Withdrawal of nominations shall be done 8 days before the election. List of contesting candidates shall be finalised 8 days before the election. Printing of ballot papers shall be ready 4 days ahead of the poll.

(j) Whenever the society fails to prepare and submit the electoral roll as per rule 3 (h) of these rules, the Election Authority may himself or through a person authorized

by him on this behalf prepare electoral roll as per section 41 (1) of the Act.

(k) Copies of the final electoral roll shall be kept in safe custody of the concerned Election Authority and the Chief Executive/ Secretary of the society.

(l) The final electoral roll shall be displayed in the office of the Cooperative Society and make copies of the same available to the members/ shareholders on payment. The cost to be paid for the copy shall be fixed by the Election Authority.

(m) Wherever the bye-laws of a Cooperative society so provide, as per section 29(2)(b) and 2 (3) of the Act, there shall be a meeting to elect the delegates to the

General Assembly, in conformity with the bye-laws of the society.

(n) The election agenda shall clearly be mentioned in the notice of Annual General Meeting/ Special General Meeting, as and when due.”

* * *

“27. Redressal of Dispute.-

(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.

(b) The Election Authority, shall make an enquiry upon the dispute on the basis of the relevant records and pass necessary order(s).”

11. The Registrar of Cooperative Societies, Assam, by its communication/instruction to the learned standing counsel for the Cooperation

Department has made it clear that the power of election authority is only vested with the Registrar of Cooperative Societies and not delegated to any other subordinate officers. On a conjoint reading of the relevant provisions of the Act and Rules extracted above, the Court finds that it cannot be said that the power to adjudicate on the correctness or otherwise of the elections held in a cooperative society could be delegated to the Assistant Registrar of Cooperative Societies, Silchar. The provisions of Rule 3(a), as extracted above, would not make the Assistant Registrar of Cooperative Societies for a sub-divisional level societies as "election authority" within the meaning of Rule 2(f) of the Election Rules in the absence of any delegation of authority. No such order of the State Govt. in writing to delegate power of election authority to any such officer has been brought on record. Therefore, in the considered opinion of the Court, the act of the Registrar of Cooperative Societies, Assam to send the matter to the Assistant Registrar of Cooperative Societies, Silchar through the Additional Registrar of Cooperative Societies (G), Assam was not in accordance with law. Therefore, in the absence of vesting of any authority to the Assistant Registrar of Cooperative Societies, Silchar to adjudicate election disputes, not only the act of transmitting the appeal filed by the petitioner to the Assistant Registrar of Cooperative Societies, Silchar is not sustainable, but the impugned order under memo No. CCRF.9/73/Pt.III/444 dated 13.04.2023 is consequently sustainable.

12. Under such circumstances, the Court is of the further considered opinion that no purpose would be served to keep the matter pending for adjudication and rather it would be in the interest of the members of the said society that the matter related to election of Mongalpur Bowalihawar Cooperative Society, Cachar be decided as expeditiously as possible, for which,

in terms of the order dated 25.01.2023, passed in WP(C) 395/2023, the Court is inclined to set aside the impugned order dated 13.04.2023, and remand the matter back to the Registrar of Cooperative Societies, Assam to exercise his power as an election authority under the 2007 Act and Election Rules and adjudicate the matter afresh having regard to the provisions of Rule 27 of the Election Rules and decide the matter within an outer period of 45 days by giving opportunity of hearing to the parties. As a sequel to the interference with the impugned order dated 13.04.2023, the consequential approval made by the Assistant Registrar of Cooperative Societies to the newly elected board is also set aside.

13. Accordingly, to enable the petitioner and the private respondents to get a reasonable opportunity of hearing, it is provided that the petitioners as well as the private respondents shall appear before the Registrar of Cooperative Societies, Assam on 27.06.2023 without awaiting for a notice to be served and await further instructions from the Registrar of Cooperative Societies, Assam. In respect of those private respondents, to whom notice has not been issued, the Registrar of Cooperative Societies, Assam shall transmit a notice of hearing to those persons through the Secretary to the concerned Cooperative Society for service to them or to any adult member of their family.

14. In view of the nature of order which has been passed, issuance of notice on the non-appearing respondent nos.9, 12, 13, 14, and 17 is dispensed with.

15. The writ petition stands allowed to the extent as indicated above at the 'motion' stage without issuance of notice on the respondents.

16. A copy of the order dated 01.06.2023 from the Registrar of

Cooperative Societies to the Secretary to the Govt. of Assam, Cooperation Department, which is produced by the learned standing counsel for the Cooperation Department, as well as a copy of the letter no. GPSS.12/2020/125 dated 23.02.2023 by the Additional Registrar of Cooperative Societies (G), Assam to the Assistant Registrar of Cooperative Societies, Silchar, as produced by the learned counsel for the appearing private respondents are made as a part of the record.

17. Accordingly, this writ petition stands partly allowed to the extent as indicated above.

18. There shall be no order as to cost.

JUDGE

Comparing Assistant