

GAHC010127192023



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

Case No. : WP(C)/3369/2023

FIRIDUL ISLAM TAPADAR AND 3 ORS.
S/O- FOKOR UDDIN TAPADAR,
VILL. RAMPUR, P.O.- KARICHERRA,
P.S.- KATLICHERRA,
DIST.- HAILAKANDI, ASSAM,
PIN- 788165.

2: PARIMAL CHANDRA SEN
S/O. LATE PRONAY CHANDRA SEN

VILL. MADAVPUR
P.O.- KARICHERRA

P.O. RAMNATHPUR

DIST.- HAILAKANDI
ASSAM

PIN- 788165.

3: MACHUM AHMED BARBHUIYA
S/O. ACHAB UDDIN BARBHUIYA

VILL.- ALOICHERRA PART-IV

P.O.- KARICHERRA
P.S.- KATLICHERRA

DIST. HAILAKANDI
ASSAM
PIN- 788165.

4: BADURL HUDA LASKAR
S/O- BAZRUL ISLAM LASKAR

VILL- ALOICHERRA PART-IV

P.O- KARICHERRA
P.S.- KATLICHERRA

DIST.- HAILAKANDI
ASSAM

PIN- 788165

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
COOPERATION DEPARTMENT,
DISPUR, GUWAHATI-06.

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

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR
DIST.- CACHAR
ASSAM

PIN- 788001.

4:THE ASST. REGISTRAR OF COOPERATIVE SOCIETIES
HAILAKANDI
DIST.- HAILAKANDI
ASSAM

PIN- 788151.

5:THE OFFICER ON MANAGEMENT OF MONIPUR S.S. LIMITED
P.O- KARICHERRA BAZAR

DIST.- HAILAKANDI
ASSAM

PIN- 788165.

6:THE SECRETARY

MONIPUR S.S. LIMITED
P.O.- KARICHERRA BAZAR

DIST.- HAILAKANDI
ASSAM

PIN- 788165.

7:ABDUL WAHID LASKAR
S/O- LT. JUAHIR ALI LASKAR

VILL.- ALOICHERRA PART-IV

P.O.- DARIARGHAT

DISTRICT- HAILAKANDI
ASSAM

PIN- 788165

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, CO OP

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

ORDER

Date : 14.06.2023

Heard Mr. S.B. Laskar, learned counsel for the petitioners. Also heard Mr. G. Bordoloi, learned standing counsel for the Cooperation Department, respondent nos.1 to 4.

2. The petitioners claimed themselves to be the share holders of Monipur Cooperative Society Ltd. It is projected that no Annual General Meeting ('AGM' for short) has been held in respect of the said society since 2019 and that there are various irregularities in the management of the said cooperative

society and the Audit Report for the previous year has not been submitted to the AGM for approval. It is submitted that the respondent no.7, namely, Abdul Wahid Laskar is holding the post of Secretary of the said society illegally. It is submitted by the learned counsel for the petitioner that as per his instructions, the respondent no.7 is aged 70 years and he is a pensioner, for which documents are annexed in the writ petition and by referring to the Rule 4 relating to the terms of employment and working conditions of the employees of cooperative societies framed under the Assam Cooperative Societies' Act, 2007 ('2007 Act' for short), it is provided that the maximum age of recruitment in society shall be the same as may be specified by the State Govt. for its employees from time to time. Accordingly, it is submitted that the respondent no.7 is illegally holding the charge of Secretary of the said society and as AGM has not been hold since 2019, by operation of Clause-6 of Section 41 of the 2007 Act, the term of the Board of Directors is deemed to have expired. Accordingly, it is submitted that the notice for election, which was issued by the respondent no.7 is illegal as the election could have been initiated only by the departmental officers. It is also submitted that as per Clause-2 of Section 40 of the 2007 Act, as no AGM was hold since the year 2019, the present Board of Directors would not be eligible for the Directorship in the said cooperative society. Hence, it is submitted that by illegally issuing notice for election, the respondent no.7 has secured nomination of 15 Board Members, whose names are indicated in paragraph 11 of the writ petition and that 4 out of 15 accepted nominations are the cousins of the respondent no.7 and one is his nephew.

3. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioners have questioned the legality of the notice dated 2.05.2023 to hold election of Monipur Cooperative Society Ltd. and that

for a direction for removal of the respondent no.7 from the post of Secretary and to direct the Assistant Registrar of Cooperative Societies, Hailakandi (respondent no.4) to ensure preparation of correct voters list and to take up the election process.

4. The learned standing counsel for the Cooperation Department has submitted that as per the provisions of section 27 of the Assam Cooperative Election Rules, 2019, the Registrar of Cooperative Societies, Assam is the competent authority for the purpose of adjudicating issues arising out of elections of the cooperative societies. Accordingly, it is submitted that the petitioner be relegated to approach the Registrar of Cooperative Societies, Assam (respondent no.2) to address the grievance of the petitioners.

5. Countering the said submission, the learned counsel for the petitioners has submitted that the date of AGM and election is fixed on 15.06.2023 and as only 15 nominations have been accepted, there is every likelihood that there would be no election.

6. On consideration of the provisions of Rule 27 of the Assam Cooperative Election Rules, 2019, the Court finds that the Registrar of Cooperative Societies, Assam is the competent authority in deciding disputes arising out of elections, it would be appropriate to relegate the petitioners to submit a representation before the respondent no.2 because it *prima facie* appears that the issues raised by the learned counsel for the petitioners has sufficient force.

7. Nonetheless, as the petitioners can avail alternative and efficacious remedy before the Registrar of Cooperative Societies, Assam (respondent no.2), the Court deem appropriate that the petitioners be relegated to approach the

Registrar of Cooperative Societies, Assam (respondent no.2) by submitting a fresh representation. It is provided that on such representation being filed by the petitioners, it is hoped that the respondent no.2 would make expeditious steps to adjudicate the grievances raised by the petitioner within a time bound manner and as the said authority also has the power to pass interim orders, it would be open to the said authority to pass an appropriate order in accordance with law.

8. Accordingly, the matter stands disposed of at the 'motion' stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant