

GAHC010135562023



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

Case No. : WP(C)/3609/2023

ABUL KALAM AZAD AND 5 ORS
S/O LT. MOKSED ALI R/O VILL. PUB MAHACHARA P.O. AND P.S
KACHUMARA DIST. BARPETA PIN 781127 ASSAM

2: HASMAT ALI
S/O LT. ASTULLA R/O VILL. KACHUMARA NC P.O. AND P.S KACHUMARA
DIST. BARPETA PIN 781127 ASSAM

3: ABUL HUSSAIN
S/O NOSIM UDDIN R/O VILL. PUB MAHACHARA P.O. AND P.S
KACHUMARA DIST. BARPETA PIN 781127 ASSAM

4: AMINUL ISLAM
S/O ABU SAYED MONDAL R/O VILL. KACHUMARA N C P.O. AND P.S
KACHUMARA DIST. BARPETA PIN 781127 ASSAM

5: SHAHAR ALI
S/O BABAR ALI R/O VILL. CHANGBANDA P.O. AND P.S KACHUMARA DIST.
BARPETA PIN 781127 ASSAM

6: JOHOR ALI
S/O AKABBAR ALI R/O VILL. KACHIMPUR P.O. AND P.S KACHUMARA
DIST. BARPETA PIN 781127 ASSA

VERSUS

THE STATE OF ASSAM AND 21 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
COOPERATIVE DEPTT. DISPUR GUWAHATI 6

2:REGISTER OF CO OPERATIVE SOCIETY
ASSAM
KHANAPARA GUWAHATI 22

3:ARCS OF CO OPERATIVE SOCIETY
BARPETA
P.O. AND DIST. BARPETA PIN 781301

4:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST. BARPETA PIN 781301

5:THE RETURNING OFFICER CO OPERATIVE SOCIETIES
BARPETA

6:NUR MOHAMMAD
PRESIDENT DAKHIN BAGORIBARI G.P.S.S. LTD

7:SHEIKH ABDULLAH WAHEDI
SECRETARY DAKHIN BAGORIBARI G.P.S.S. LTD PIN 781127

8:ABDUL HANNAN
S/O LT. KITA PALI BHUYAN R/O KASHIMPUR P.O. AND P.S. KACHUMARA
DIST. BARPETA PIN 781127

9:ABDUL MAJID
S/O LT. KITAPAI BHUYAN R/O VILL. SHIMULBARI P.O. AND P.S.
KACHUMARA DIST. BARPETA PIN 781127

10:ABDUR RASHID
S/O AKBAR ALI R/O VILL.MAHACHARA P.O. AND P.S. KACHUMARA DIST.
BARPETA PIN 781127

11:AZAHAR ALI
S/O LT. HAZRAT ALI R/O VILL. KACHUMARA NC P.O. AND P.S.
KACHUMARA DIST. BARPETA PIN 781127

12:JAHIDUL ISLAM
S/O AKBAR ALI R/O VILL. MAHACHARA P.O. AND P.S. KACHUMARA DIST.
BARPETA PIN 781127

13:ZAHERUL ISLAM
S/O ABDUL MATLEB R/O VILL. MAHACHARA P.O. AND P.S. KACHUMARA
DIST. BARPETA PIN 781127

14:SOBUR UDDIN
S/O LT. ABU BAKKAR R/O VILL. KACHUMARA NC P.O. AND P.S.
KACHUMARA DIST. BARPETA PIN 781127

15:SURMAN ALI
S/O LT. SIDDIQUE ALI R/O VILL. KACHUMARA NC P.O. AND P.S.
KACHUMARA DIST. BARPETA PIN 781127

16:MAINUL HOQUE
S/O KUMOL ALI R/O VILL. KACHIMPUR P.O. AND P.S. KACHUMARA DIST.
BARPETA PIN 781127

17:SAHER UDDIN
S/O VILL. LT. AZAD ALI R/O VILL. PUB MAHACHAR P.O. AND P.S.
KACHUMARA DIST. BARPETA PIN 781127

18:NOBIR HUSSAIN
S/O MOZIBAR RAHMAN MOLLAH R/O VILL. KACHUMARA NC P.O. AND
P.S. KACHUMARA DIST. BARPETA PIN 781127

19:NUR HAMID
S/O LT. SURHAB ALI R/O VIL.KACHUMARA NC P.O. AND P.S. KACHUMARA
DIST. BARPETA PIN 781127

20:KANCHAN AHMED
W/O ASMA ALI R/O VILL. KACHUMARA NC P.O. AND P.S. KACHUMARA
DIST. BARPETA PIN 781127

21:MONOWARA KHATUN
W/O JAHIRUL ISLAM R/O VILL. MAHACHARA P.O. AND P.S. KACHUMARA
DIST. BARPETA PIN 781127

22:SHAMOR DAS
S/O SACHINDRA DAS R/O VLL. HORI DUBA P.O.AND P.S NAGERBERA
DIST. KAMRUP PIN 78112

Advocate for the Petitioner : MR M RANA

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 23.06.2023

Heard Mr. M. Rana, learned counsel for the petitioner and Mr. S.K. Talukdar, learned standing counsel for the Cooperative Department appearing for the respondent nos. 1, 2, 3 and 5, Ms. M. Barman, learned Govt. advocate

appearing for the respondent no.4.

2. In view of the nature of order proposed to be passed, issuance of notice on the private respondent nos. 6 to 22 are dispensed with.

3. It may be mentioned that a similar matter was disposed of by this Court by order dated 13.06.2023 in WP(C) 1323/2022 and as there was every possibility that inconsistent orders may come in Court, this matter was listed along with the disposed of records of WP(C) 1323/2022 so that the counsel for the petitioner in the said WP(C) 1323/2022 is also heard.

4. Mr. D. Bora, learned counsel appearing on behalf of Mr. S. Banik, learned counsel for the petitioner in WP(C) 1323/2022.

5. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the election of Dakshin Baguribari SS Ltd., held on 05.06.2023. It is alleged that the said election was mired with various anomalies for which objections were raised. However, the Returning Officer did not consider the objections and continued with the election. Therefore, the petitioner had filed written complaint before the Deputy Commissioner and Asst. Registrar of Cooperative Society, Barpeta. However, as no action was taken, the present writ petition has been filed under Article 226 of the Constitution of India.

6. The Court finds that as there is an election dispute, the appropriate

authority to adjudicate the election disputes is the Registrar of Cooperative Society as per Rule 27 of the Assam Cooperative Society Election Rules, 2019. Therefore, it would be appropriate to relegate the petitioner to approach the election authority.

7. However, it may be mentioned that in connection with the WP(C) 1323/2022, this Court by order dated 13.06.2023 had observed as follows:

“4. In view of the contents of the notification dated 27.01.2022, issued by the Additional Chief Secretary to the Govt. of Assam, Cooperation Department, the Court is inclined to observe that the intention of the Govt. was to exempt the societies from operation of section 39 and 41(2) of the 2007 Act. However, by the time the notification was issued, the exemption granted had already expired. Under such circumstances, the Court is inclined to provide that the non-holding of AGM and/or elections by the petitioner nos.1 and 2 societies, namely, (1) Dakshin Baguribari Samabay Samity Ltd., and (2) Paschim Sarukhetri Samabay Samity Ltd. shall not be construed to have disqualified the present Board of Directors to participate in the next elections. However, it is provided that the elections would be held by the authorities assigned by the Registrar of Cooperative Societies to hold such elections, which would be done departmentally within an outer period of 50 days from today, which is inclusive of 5 (five) days time to the petitioners to produce certified copies of this order before the competent authorities, giving them 45 days period of time to hold such election.”

8. It appears that the elections which were already held on 05.06.2023 was not brought to the notice of the Court perhaps inadvertently, when the previous writ petition was heard. Therefore, the only way to reconcile the previous order with the present case is to relegate the petitioner to approach the election authority in an appropriate manner and on such dispute being raised, the said

authority shall hear the concerned parties on the objection raised against the election held on 05.06.2023 and pass appropriate orders thereon.

9. Accordingly, if the Registrar of Cooperative Society holds that the election was proper, then there will be no requirement of the fresh election to be held pursuant to order dated 13.06.2023 passed in WP(C) 1323/2022.

10. Nonetheless, if the Registrar of Cooperative Society holds that the elections were not appropriately held, in that event the competent authorities under the Registrar of Cooperative Society would proceed to hold election as permitted by hereinbefore referred order dated 13.06.2023 passed in WP(C) 1323/2022.

11. Let a copy of this order be retained in the records of WP(C) 1323/2022.

12. To the extent as indicated above, this writ petition stands disposed of.

JUDGE

Comparing Assistant