

GAHC010172622023



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

Case No. : WP(C)/4588/2023

A SUBAN AND 4 ORS
S/O- LT. IDRISH ALI,
VILLAGE- MAHMARI PATHAR,
P.O.- TENGAGURI, P.S.- LAHARIGHAT,
DISTRICT- MORIGAON, ASSAM.

2: NURMAHAMMAD RAJA
S/O- A. REZZAK RAJA

VILLAGE- TENGAGURI KACHARIGAON

P.O.- TENGAGURI
P.S.- LAHARIGHAT

DISTRICT- MORIGAON
ASSAM.

3: MAZIBAR RAHMAN
S/O- LT. JAMSHED ALI

VILLAGE- TENGAGURI

P.O.- TENGAGURI
P.S.- LAHARIGHAT

DISTRICT- MORIGAON
ASSAM.

4: MANIKJAN
W/O- LT. HURMUJ ALI

VILLAGE- TENGAGURI KACHARIGAON

P.S.- LAHARIGHAT

DISTRICT- MORIGAON
ASSAM.

5: MUSSA. BANESA KHATUN
W/O- LATE HANIF ALI

VILL- HATHILARUAPATHAR

PS- LAHORIGHAT

DIST- MORIGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
COOPERATION DEPARTMENT,
DISPUR, GAUHATI-06.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GAUHATI- 781022.

3:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
GAUHATI ZONE
BHANGAGARH
GAUHATI-05.

4:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
MORIGAON
ASSAM.

5:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
MORIGAON
ASSAM.

6:THE CHAIRMAN

ONE MAN AD-HOC MANAGING COMMITTEE OF TENGAGURI S.S. LTD.-
CUM- SENIOR INSPECTOR/ AUDITOR OF CO-OPERATIVE SOCIETIES

OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
MORIGAON

ASSAM.

7:THE SECRETARY
TENGAGURI SAMABAY SOCIETY LTD.
TENGAGURI
MORIGAON
ASSAM

PIN- 782127

For the Petitioner(s) : Mr. J. Ahmed, Advocate

For the Respondent(s) : Ms. M. D. Borah, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 17.08.2023

1. The instant writ petition has been filed by the Petitioners who were the Members of Board of Directors of Tengaguri S.S. Ltd., Morigaon. These Petitioners were elected on the basis of an election held on 20.07.2017 and in terms with Section 31 of the Assam Cooperative Societies Act, 2007 (for short "the Act of 2007"), the term of the said Board of Directors was to expire on 19.07.2022.

2. The Board of Directors of Tengaguri S.S. Ltd. was dissolved vide an order dated 20.04.2021 by the Zonal Joint Registrar of Cooperative Societies. Subsequent thereto, vide an order dated 28.02.2023, the Registrar of Cooperative Societies, Assam had upheld the order dated 20.04.2021 and directed the One Man Committee so appointed to hold the AGM/election of the Cooperative Society i.e. Tengaguri S.S. Ltd. The One Man Committee thereupon issued notice on 17.07.2023. The Petitioners who were the erstwhile Members of the Board of Directors had approached this Court on an apprehension that their nomination in the election to be held on 27.08.2023 would be cancelled on the ground of disqualification in terms with Section 40(4)(a) and Section 40(4)(e) of the Act of 2007.

3. The learned counsel appearing on behalf of the Petitioners has drawn the attention of this Court that in respect to the other Members of the Board of Directors of the same Cooperative Society, this Court vide a judgment and order dated 16.08.2023 had observed that the said Members of the Board of Directors cannot be disqualified if they submit their nominations on the ground of disqualifications as set out in Section 40(4)(a) and Section 40(4)(e) of the Act of 2007 in respect to the ensuing election.

4. I have also heard Ms. M. D. Borah, the learned counsel appearing on behalf of the Cooperation Department.

5. This Court have vide an judgment and order dated 16.08.2023 had categorically held in respect to the same Cooperative Society that the Registrar of Cooperative Society in its order dated 28.02.2023 did not take into account the relevant materials while deciding the validity of the order dated 20.04.2021 for which the order dated 20.04.2021 dissolving of the Board was not proper.

Paragraph Nos. 25 to 27 of the said judgment being relevant are quoted hereinunder:

“25. Under the circumstances, the apprehension of the petitioners on the basis of the order dated 28.02.2023 and Notice dated 17.07.2023 that they would be disqualified under Section 40 (4)(a) and Section 40(4) (e) is well founded. As observed supra, it was not on account of the fault of the petitioners that the AGM could not be held for which the Petitioners should suffer disqualification and as such appropriate directions are required to be passed.

26. Under such circumstances, this Court disposes of the writ petition with an observation that the petitioners cannot be disqualified if they submit their nominations on the ground of disqualifications as set out in Section 40 (4)(a) and Section 40(4)(e) of the Act of 2007 in respect to the ensuing election of the Cooperative Society.

27. With the above observations, the instant writ petition is disposed of. Mr. S.K. Talukdar, the learned counsel, shall inform the Respondents about the order so passed today so that the nominations, if submitted by the Petitioners, are not rejected on the grounds of Section 40(4)(a) and Section 40(4)(e) of the Act of 2007.”

6. Taking into account that the issue involved in the instant writ petition is same to the case of the Petitioners in WP(C) No.4691/2023, this Court also disposes of the instant writ petition with an observation that the Petitioners herein cannot be disqualified, if they submit their nominations, on the ground of disqualifications as set out in Section 40(4)(a) and Section 40(4)(e) of the Act of 2007 in respect to the ensuing election of the Cooperative Society in question to be held on 27.08.2023.

7. Ms. M. D. Borah, the learned counsel appearing on behalf of the Respondents is directed to inform the Respondents about the order so passed today so that the nominations, if submitted by the Petitioners, are not rejected on the ground of Section 40(4)(a) and Section 40(4)(e) of the Act of 2007.

8. With the above observations, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant