

GAHC010174672023



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

Case No. : WP(C)/4579/2023

SAYED HUSSAIN BORBHUYAN
S/O LT. MOIN UDDIN BORHHUIYA R/O VIL. NO. 1 MOUZADARGAON P.O.
NAKHUT BAZAR DIST. HOJAI ASSAM PIN 782446

VERSUS

THE STATE OF ASSAM AND 12 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
COOPERATIVE DEPTT. DISPUR GUWAHATI 6

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA GUWAHATI 22

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
HOJAI
P.O. AND DIST. HOJAI
ASSAM

4:THE SECRETARY
NAKHUTI SAMABAY SAMITTEE LTD.
P.O. NAKHUTI BAZAR DIST. HOJAI ASSAM PIN 782446

5:BILAYAT HUSSAIN
S/O SAHAB UDDIN AHMED R/O VILL. NO. 2 MOUZADAR GAON P.O.
NAKHUTI BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

6:DULAL UDDIN
S/O LT. ABDUL KHALEK R/O VILL. NO. 2 MOUZADAR GAON P.O.
NAKHUTI BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

7:HABIJ UDDIN

S/O JAINAL UDDIN R/O VILL. NO. 2 KHAGORI JAN P.O. NAKHUTI BAZAR
P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

8:JAHANARA BEGUM
W/O MUJAMMIL HUSSAIN R/O VILL. NO. 2 KHAGORI JAN P.O. NAKHUTI
BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

9:AIN UDDIN
S/O NAJRUL HOQUE R/O VILL. NO. 1 MOUZADAR GAON P.O. NAKHUTI
BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

10:ABDUL SUBAN
S/O MOHAMMAD ALI R/O VILL. SERKEY BASTI GAON P.O. NAKHUTI
BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

11:SOBIRAM BASUMATARY
S/O LT. PANIRAM BASUMATARY R/O VILL. LALMATI MIDDLE GAON P.O.
NAKHUTI BAZAR P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

12:ABDUL SAHID
S/O LT. ALTAB ALI R/O VILL. NO. 2 DEBEEN GAON P.O. NAKHUTI BAZAR
P.S. LUMDING DIST. HOJAI ASSAM PIN 782446

13:FIRUJA BEGUM
W/O ABUL KALAM R/O VILL LANKAJAN P.O. TINALI BAZAR P.S LANKA
DIST. HOJAI ASSAM PIN 78244

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 14-08-2023

Heard Mr. P.K. Roychoudhury, learned counsel for the writ petitioner. Also heard Ms. M.D. Bora, learned standing counsel, Cooperation Department, Assam appearing for the respondent Nos. 1 to 3. Mr. S. Islam, learned counsel is present on behalf of respondent

No. 5 on the strength of a caveat.

This writ petition has been filed assailing the order dated 15-07-2023 issued by the Registrar of Cooperative Societies, i.e. the respondent No. 2 affirming the earlier order dated 28-04-2023 by means of which, the selection of the writ petitioner as the President of the Nakhuti SS Ltd and one Siddik Ali as the Vice-President of the said SS Ltd. were set aside. Aggrieved by the order dated 28-04-2023, the writ petitioner had earlier approached this Court by filing W.P.(C) No. 2797/2023. After taking note of the grievance expressed in the writ petition, the learned Single Judge had passed order dated 23-05-2023 in W.P.(C) No. 2797/2023 suspending the operation of the order dated 28-04-2023 but by granting leave to the respondent No. 2 to re-hear the parties on the question of validity of selection of the President and the Vice-President of the Nakhuti SS Ltd. and pass appropriate order therein. By virtue of the interim order dated 23-05-2023, the petitioner has continued in office. During the pendency of the above writ petition, the respondent No. 2 had passed order dated 15-07-2023 affirming his earlier order dated 28-04-2023. The net result of the impugned order is that the petitioner would stand ousted from the post of the President of the Nakhuti SS Ltd. The order dated 15-07-2023 has been primarily assailed on the ground that the said order was passed without hearing the petitioner and by placing reliance on Rule 34 of the Assam Cooperative Societies Rules, 1953 (in short "the Rules of 1953"), which according to the petitioner's counsel, has been repealed in the year 2012.

Mr. Roychoudhury submits that had his client been given an opportunity of being heard in the matter, the said legal aspect would certainly have been pointed out before

the respondent No. 2, in which event, the outcome of the proceeding, in all probability, would have been different.

I also find from the perusal of the order dated 15-07-2023 that there are some typographical mistakes in the order pertaining to reference of dates whereby, in paragraph 3 of the order, events subsequent to 15-07-2023 have been referred to and taken note of in the impugned order for arriving at the impugned conclusion. In all probability, the impugned order was issued on "15-08-2023" and not on 15-07-2023 as has been projected in the order.

In order to ascertain as to whether the petitioner was heard in the matter, the learned departmental counsel was asked to produce the records. Today when the matter was called up, records have been produced, which clearly goes to show that the petitioner was not heard during the second hearing which had lead to the issuance of the impugned order. The fact of the matter is that the petitioner is the party affected by the order dated "15-07-2023" yet, he has not been heard before the order was passed. There was no direction from this Court to conduct an *ex-parte* hearing by ignoring the presence of the petitioner. If that be so, it is apparent on the face of the record that the impugned order dated 15-07-2023 besides being vitiated due to perversity, had also been issued in flagrant violation of the principles of natural justice. If that be so, the impugned order is clearly unsustainable in the eyes of law and deserves to be set aside by this Court.

Mr. Islam has also not been able to make any submission so as to deny the assertion of the petitioner's counsel on the above count.

In view of the above, this Court is of the opinion that no practical purpose will be served by keeping this writ petition pending merely for the purpose of serving notice upon the private respondents, whose interests are sufficiently represented by the respondent No. 5 herein.

In view of the above, the impugned order dated 15-07-2023 is hereby set aside. The matter is remanded back to the respondent No. 2 to conduct a fresh hearing in the matter and pass appropriate order therein after hearing the version of all the interested parties including the writ petitioner.

The aforesaid exercise be carried out and completed as expeditiously as possible, but not later than 04 weeks from the date of receipt of a certified copy of this order.

Needless to say, it will remain open to the petitioner to urge all legal grounds, as per the leave granted in the earlier order dated 08-08-2023 passed in W.P.(C) No. 2797/2023, at an appropriate stage, if so deemed necessary.

Records be returned back.

Writ petition stands disposed of.

JUDGE

GS

Comparing Assistant