

GAHC010208582023



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

Case No. : WP(C)/5399/2023

JIA UDDIN AHMED
S/O- MAINUDDIN,
VILL- DHUPAGURI,
P.O- DHUPAGURI,
DIST- NAGAON, ASSAM, PIN-782126

VERSUS

THE STATE OF ASSAM AND 18 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022

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

4:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
NAGAON
ASSAM
PIN-782105

5:WAJIDA KHATUN
W/O- GULZAR HUSSAIN

R/O- VILLAGE BHERBHERI

P.O- DHUPAGURI

P.S- BATRADAWA

DIST- NAGAON
ASSAM
PIN-782123

6:MAINUL HOQUE
S/O- LATE AFTAB UDDIN

R/O- VILLAGE BHERBHERI

P.O- DHUPAGURI

P.S- BATRADAWA

DIST- NAGAON
ASSAM
PIN-782123

7:WAIZUL HOQUE CHOWDHURY
S/O- ABDUL AJIT

R/O- VILLAGE DHUPAGURI PATHAR

P.O- DHUPAGURI

P.S- DHING

DIST- NAGAON
ASSAM
PIN-782123

8:MOJIBUR RAHMAN
S/O- KUDRAT ALI

R/O- VILLAGE DHUPAGURI PATHER

P.O- DHUPAGURI

P.S- DHING

DIST- NAGAON
ASSAM
PIN-782123

9:AJIJUL HOQUE
S/O- LATE USMAN GONI

R/O- VILLAGE DHUPAGURI PATHER

P.O- DHUPAGURI

P.S- DHING

DIST- NAGAON
ASSAM
PIN-782123

10:AJIJUL HOQUE
S/O- MOHAMMAD ALI

R/O- VILLAGE DHUPAGURI

P.O- DHUPAGURI

DIST- NAGAON
ASSAM
PIN-782123

11:SALEHA KHATUN
S/O- MOHAMMAD ALI

R/O- VILLAGE DHUPAGURI

P.O- DHUPAGURI

P.S- DHING

DIST- NAGAON
ASSAM
PIN-782123

12:MUSLEM UDDIN
S/O- LATE MOHAMMAD ALI

R/O- VILLAGE KADAMONI PATHER

P.O- KADAMONI

P.S- BATRADAVA

DIST- NAGAON

ASSAM
PIN-782123

13:AJIJUL HAQUE
S/O- LATE ABDUL HUSSAIN

R/O- VILLAGE KADAMONI

P.O- KADAMONI

P.S- BATRADAVA

DIST- NAGAON
ASSAM
PIN-782123

14:ALI AKBAR
S/O- AMIR UDDIN

R/O- VILLAGE DHUPAGURI

P.O- DHUPAGURI

P.S- BATRADAVA
DIST- NAGAON
ASSAM
PIN-782123

15:ABUL KALAM
S/O- LATE SAMSUDDIN

R/O- VILLAGE BHER BHERI

P.O- DHUPAGURI

DIST- NAGAON
ASSAM
PIN-782123

16:IKRAMUL HOQUE
S/O- SAMSUL HOQUE

R/O- VILLAGE DHUPAGURI PATHER

P.O- DHUPAGURI

DIST- NAGAON

ASSAM
PIN-782123

17:ABUL KALAM
S/O- LATE HAJI ABDUL WAHAB

R/O- VILLAGE DHUPAGURI PATHER

P.O- DHUPAGURI

DIST- NAGAON
ASSAM
PIN-782123

18:SAIFUL ISLAM
S/O- ABDUL MAZID

R/O- VILLAGE DHUPAGURI PATHER

P.O- DHUPAGURI

DIST- NAGAON
ASSAM
PIN-782123

19:PRAFULLA BASHUMATARY
S/O- SOWABER BASHUMATARY

R/O- VILLAGE SAHARIA GAON

P.O- SONARIGAON

DIST- NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR D KALITA

Advocate for the Respondent : SC, CO OP

Linked Case : WP(C)/5400/2023

KHAIRUL ISLAM AND 11 ORS

S/O- SAFIR UDDIN

R/O- VILL- KADAMONI

P.O.- KADAMONI

P.S.- BATADRABA

DISTRICT- NAGAON
ASSAM.

2: HARUN ROSHID
S/O- SAMSUL HOQUE

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

3: FAIJUDDIN
S/O- MOIJUDDIN

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

4: NURJAMAN
S/O- ABUL KALAM

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

5: SULEMA KHATUN

W/O- SAIFUL ISLAM

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

6: ATABUR RAHMAN
S/O- MUSLEM UDDIN

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

7: MOMTAJ ALI
C/O- NURUL ISLAM

R/O- VILL. DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

8: MUBAROK HUSSAIN
S/O- ASRAF UDDIN

R/O- VILL.- BHERBHERI

P.O.- DHUPAGURI

P.S.- BATADRABA

DISTRICT- NAGAON
ASSAM.

9: MOMIN ALI

S/O- NURUL ISLAM

R/O- VILL.- BHERBHERI

P.O.- DHUPAGURI

P.S.- BATADRABA

DISTRICT- NAGAON
ASSAM.

10: HUSSAIN ALI
S/O- LATE ASOR ALI

R/O- VILL.- BHERBHERI

P.O.- DHUPAGURI

P.S.- BATADRABA

DISTRICT- NAGAON
ASSAM.

11: JAYANTA DAIMARY
S/O- KALIMON DAIMARY

R/O- DHUPAGURI KACHARI GAON

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.

12: ARJUMA KHATUN
W/O- ROFIQUL ISLAM

R/O- VILL. DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM.
VERSUS

THE STATE OF ASSAM AND 14 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

CO-OPERATION DEPARTMENT
DISPUR

GUWAHATI- 781006.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
GOVT. OF ASSAM
KHANAPARA

GUWAHATI- 781022.

3:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
NAGAON.

4:DHUPAGURI SAMABAI SAMITI LTD.
REPRESENTED BY THE CHAIRMAN

ONE MAN COMMITTEE OF DHUPAGURI SAMABAI SAMITI LTD.

DHUPAGURI
NAGAON.

5:RETURNING OFFICER TO THE ELECTION OF DHUPAGURI SAMABAI
SAMAITI LTD.

DHUPAGURI
NAGAON.

6:WAJIDA KHATUN
W/O- GULZAR HUSSAIN

R/O- VILL. BHER BHERI

P.O.- DHUPAGURI

P.S.- BATADRAWA

DISTRICT- NAGAON
ASSAM

PIN- 782123.

7:MAINUL HOQUE
S/O- LATE AFTAB UDDIN

R/O- VILL. BHER BHERI

P.O.- DHUPAGURI

P.S.- BATADRAWA

DISTRICT- NAGAON
ASSAM

PIN- 782123.
8:WAIZUL HOQUE CHOUDHURY
S/O- ABDUL AJIT

R/O- VILL.- DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.
9:MOJIBUR RAHMAN
S/O- KUDRAT ALI

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.
10:AJIJUL HOQUE
S/O- LATE USMAN GONI

R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.
11:AJIJUL HOQUE
S/O- MOHAMMAD ALI

R/O- VILL. DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.
12:SALEHA KHATUN
S/O- MOHAMMAD ALI

R/O- VILL. DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.
13:MUSLEM UDDIN
S/O- LATE MAHAMMAD ALI

R/O- VILL.- KADAMONI PATHER

P.O.- KADAMONI

P.S.- BATADRAVA

DISTRICT- NAGAON
ASSAM

PIN- 782123.
14:AJIJUL HOQUE
S/O- LATE ABUL HUSSAIN

R/O- VILL.- KADAMONI

P.O.- KADAMONI

P.S.- BATADRAVA

DISTRICT- NAGAON
ASSAM

PIN- 782123.

15:ALI AKBAR
S/O- AMIR UDDIN

R/O- VILL.-DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

Advocate for : MR S BORTHAKUR
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 14 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 10-10-2023

Heard Mr. S. Borthakur, learned counsel for the writ petitioners in W.P.(C) No. 5400-2023 and Mr. S. Hoque, learned counsel for the writ petitioner in W.P.(C) No. 5399-2023. Also heard Mr. S.K. Talukdar, learned standing counsel, Cooperation Department, Assam appearing for the official respondents. Mr. M.K. Hussain, learned counsel has appeared for the private respondents in both these proceedings.

The order dated 01-09-2023 passed by the Registrar of Cooperative Societies permitting some of the private respondents, viz. respondent Nos. 7 to 15 in W.P.(C) No. 5400/2023 to participate in the AGM/ election of M/s Dhupaguri S.S. Ltd. held on 17-09-2023, has been put under challenge in both these writ petitions instituted by some of the

share-holders of the Samity, who had also taken part in the election process, *inter alia*, on the ground that the impugned order is without jurisdiction.

According to the writ petitioners, the private respondents, who had participated in the AGM/ election, are the members of the previous Board of the Samity whose term stood dissolved by operation of Section 39 of the Assam Cooperative Societies Act, 2007 and therefore, in view of the specific provision of Section 41(8) of the Act of 2007 read with Clause 23(Ka)(2) of the By-laws of the Society, they were not eligible to seek re-election. On such ground, Mr. Borthakur submits that this is a clear case of improper acceptance of nomination of the said respondents who were ineligible to participate in the AGM/ election under the law. The learned counsel for the petitioners have further argued that the writ petitioners were precluded from raising objection before the Returning Officer, as per the prescription of the statute, in view of the impugned order dated 01-09-2023 passed by the Registrar of Cooperative Societies permitting the private respondents to participate in the AGM/ election. The impugned order dated 01-09-2023 has also been assailed by the petitioners on the ground that the same is *dehors* the provision of law inasmuch as the Registrar of Cooperative Societies does not have any authority or power vested under the statute to pass such an order and that the impugned order has been passed on wholly irrelevant consideration.

Responding to the above, Mr. S.K. Talukdar, learned standing counsel, Cooperation Department, Assam has argued that if the petitioners are aggrieved by the acceptance of the nominations filed by the private respondents then the remedy would lie in filing election petitions under Rule 27 of the Assam Cooperative Societies Election Rules, 2019

for setting aside their elections. Insofar as the exercise of powers by the Registrar of Cooperative Societies is concerned, Mr. Talukdar has placed reliance on a decision of the Division Bench rendered in the case of ***Jahurul Islam & Ors. Vs. Bakhtar Hussain & Ors. (W.A. No. 31/2019)*** to submit that by interpreting the provisions of Section 39 and 40(4)(a) of the Act of 2007, the Division Bench of this Court has held that responsibility of convening the meeting is upon the Secretary of the Samity and therefore, merely because the AGM was not convened within the statutory period, the Board cannot be held responsible. To that extent, submits Mr. Talukdar, the decision of the Registrar of Cooperative Societies in the facts and circumstances of the case, cannot be faulted in the eyes of law.

The question as to whether the decision in the case of ***Jahurul Islam & Ors. (Supra)*** would be attracted to the facts and circumstances of the case, is a matter that would require deeper examination. However, since the AGM/ election of the Society has already been held, the election of the private respondents, if any, can be called into question by filing individual election petitions, that too if it turns out that any one or several of them have actually been elected. It is not in dispute that the election results are yet to be declared. As such, it is not known at this point of time as to whether any of the private respondents have at all been elected. Likewise, it is also not clear, if any of the writ petitioners who had participated in the election, has been elected. Under the circumstances, it would not be possible for this Court to pass a speculative order on the prayer made in the writ petitions.

Situated thus, without expressing any further opinion on the merit of the claims

and counter claims of the parties, the respondents are granted liberty to declare the results of the AGM/ election of the Society and thereafter, take appropriate steps in the matter, in accordance with law.

The petitioners would also be at liberty to call into question, the election of any of the private respondents on the grounds of improper acceptance of their nomination papers, if so advised. If such election petition(s) is filed by the petitioners or any one of them, the same be decided on the merit of the case, without being influenced by the impugned order dated 01-09-2023 passed by the Registrar of the Cooperative Societies.

Needless to mention herein that the period of limitation for filing the election petition shall be reckoned from the date of declaration of the election results.

With the above observation, these writ petitions stands disposed of.

JUDGE

GS

Comparing Assistant