

GAHC010265432022



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

Case No. : WP(C)/8312/2022

SALIM UDDIN LASKAR AND ANR
S/O- LT. KUPAD ALI LASKAR

VILLAGE- BASHBARI GRANT

P.O.- BASHBARI
P.S.- ALGAPUR

DIST. HAILAKANDI
ASSAM.

2: ABDUL MANNAN BARBHUIYA
S/O- LT. MONIR ALI BARBHUIYA

VILLAGE- KACHUDARAM PT-I

P.O.- RATAKANDI
P.S. AND DIST.- HAILAKANDI
ASSAM.
VERSUS

THE STATE OF ASSAM AND 9 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM

CO-OPERATION DEPARTMENT

DISPUR
GUWAHATI-6.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM

KHANAPARA
GUWAHATI-22.
3:THE ASSTT. REGISTRAR
CO-OPERATIVE SOCIETIES
HAILAKANDI
P.O. AND P.S.- HAILAKANDI

DIST. HAILAKANDI
ASSAM.
4:THE ZONAL JOINT REGISTRAR
COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR.
5:THE RETURNING OFFICER

BATIRKUPA SAMABAI SAMITTEE LTD.

HAILAKANDI
ASSAM.
6:THE ONE MAN COMMITTEE
BATIRKUPA SAMABAI SAMITTEE LTD.

HAILAKANDI
ASSAM.
7:NAZRUL ISLAM LASKAR
S/O- LT. PASAND ALI LASKAR

R/O- CHANDPUR

P.O.- CHANDPUR WEST

DIST.- HAILAKANDI
ASSAM.
8:BALI RAM NUNIA
S/O- LT. TAPESWAR NUNIA

R/O- SARESPAR T.J.E.

P.O. CHANDIPUR WEST

DIST.- HAILAKANDI
ASSAM.
9:AKTAR HUSSAIN LASKAR
S/O- LT BASIR UDDIN LASKAR

VILL- KANCHANPUR PART-II

P.O.- KANCHANPUR

DIST.- HAILAKANDI
ASSAM.
10:ABDUL KARIM MAZUMDER
S/O- LT. EBADUR RAHMAN MAZUMDER

VILLAGE- ITARKANDI PART-I

P.O.- RATAKANDI
DIST.- HAILAKANDI
ASSAM.

Advocate for : MR. A M BARBHUIYA
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 9 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

25.09.2023

Heard Mr. A. M. Barbhuiya, learned counsel for the petitioners. Also heard Mr. S. K. Talukdar, learned Standing Counsel, Cooperation Department, Assam appearing on behalf of respondent Nos.1 to 6. Mr. S.Banik, learned counsel is present on behalf of the respondent Nos.7 to 10.

The two writ petitioners herein are the shareholders of Bhatirkupa Samabai Samiti Ltd. situated in the district of Hailakandi. According to the petitioners, ineligible candidates have been allowed to participate in the last election of the Samabai Samiti Limited held on 25.12.2022 on the strength of the order dated 14.12.2022 issued by the Additional Registrar of Cooperative Societies. According to the petitioners, the acceptance of nomination of as many as 7 numbers of shareholders of the Society, some of whom have been elected in the 15 member Board, is illegal and hence, the same had a vitiating affect on the election process itself. The petitioners are also aggrieved by the approval

granted to the proceedings of the election/AGM although the order granting approval is not specifically under challenge in the present proceeding.

Mr. Talukdar, learned Standing Counsel, Cooperation Department, Assam submits that the impugned order dated 09.12.2022 as well as the order granting approval to the proceedings of the AGM/election are both appellable orders under Section 111 of the Assam Cooperative Societies Act, 2007 and therefore, the writ petitioners be directed to avail alternative to them statutory remedy available under the law. Mr. Talukdar has further pointed out that since the impugned order dated 14.12.2022 had been issued by the Additional Registrar of Cooperative Societies, Assam, who had exercised the powers of Registrar of Cooperative Societies, the said order would be appellable under Section 111(3) of the Act of 2007 before the Government. However, according to Mr. Talukdar, the order granting approval to the proceedings of the AGM/election having been passed by the Assistant Registrar of Cooperative Societies, an appeal would against the said order lie before the Registrar of Cooperative Societies under Section 111(1) of the Act of 2007.

Mr. S. Banik, learned counsel for the private respondents submits that once the election is held and the proceedings have been approved, the only remedy that can be availed by the petitioners is by calling into question the elections of the individual members by filing appropriate election petitions.

Be that as it may, since the petitioners' counsel has also agreed that the issues raised in this writ petition involves several disputed questions of fact which would require a factual enquiry and since there is no dispute about the fact that alternative statutory remedy is available to the writ petitioners under Section 111 of the Act of 2007, hence, this writ petition is being disposed of by granting

liberty to the petitioners to avail appellate remedy as may be permissible under Section 111 of the Act of 2007. If an appeal is preferred before the appropriate authority within two weeks from today, the same be considered on merit and be disposed of by a speaking order within a further period of six weeks, after giving an opportunity of being heard to the contesting parties.

Writ Petition stands closed.

JUDGE

Comparing Assistant