

GAHC010011742024



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

Case No. : WP(C)/271/2024

ISMAIL HUSSAIN
S/O ISAB ALI, R/O VILL- SHOLMARI, P.S.-KALGACHIA, DIST- BARPETA,
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
GUWAHATI ZONE
BHANGAGARH
GUWAHATI-5

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

5:ONE-MAN COMMITTEE/ ELECTION OFFICER (GOVT OFFICER ON
MANAGEMENT)DAKSHIN TITAPANI SAMABAY SAMITI LTD
BARPETA
ASSAM)
PIN-781319

6:THE SECRETARY
DAKSHIN TITAPANI SAMABAY SAMITY LTD.
BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

26.07.2024

1. Heard Mr. P. K. Roy Choudhury, learned counsel for the petitioner. Also heard Mr. S. K. Talukdar, learned Standing Counsel, Cooperation Department for the respondent No. 1, 2, 3, 4, 5, and 6.
2. The petitioner was earlier elected as one of the Directors in the Board of Directors of M/s Dakshin Titapani Samabay Samittee Limited ['the Society', for short], a cooperative society registered under the provisions of the Assam Cooperative Societies Act, 2007 in the Election/Annual General Meeting [AGM] held on 23.09.2018. The AGM of the Society for the Cooperative Year: 2021 – 2022 could not be held due to Covid-19 pandemic and other ancillary issues. When a writ petition, W.P.[C] no. 7135/2022 was preferred by the petitioner and other members of the Board of Directors, the said writ petition was disposed of by an Order dated 11.11.2022 with a direction to the respondent authorities to allow the petitioners to hold the AGM of the Society on or before 15.12.2022. Accordingly, the One Man Management Committee who was appointed earlier to hold the AGM, was withdrawn w.e.f. 19.11.2022. It was on 14.12.2022 i.e. one day prior to the AGM scheduled on 15.12.2022, the petitioner tendered his

resignation from the post of Chairman of the Board of Directors of the Society but continued as a Director in the said Board of Directors of the Society. Finally, a notice regarding the Election/AGM of the Society has been scheduled on 21.01.2024 by a Notice dated 02.01.2024. In response to the said Notice, the petitioner submitted his nomination paper to contest the Election but the Election Authority has rejected the nomination of the petitioner, on 11.01.2024, on the ground that the petitioner as a part of the Board of Directors of the Society had failed to hold the AGM of the Society in compliance of the provisions of Section 40 of the Assam Cooperative Societies Act, 2007.

3. Mr. Roychoudhury, learned counsel for the petitioner has categorically asserted that the other Directors of the said Board of Directors of the Society of which the petitioner was a part before tendering his resignation on 14.12.2022, have been allowed to submit their nomination papers and their nomination papers have also been accepted.
4. Having regard to the categorical assertions made by Mr. Roychoudhury that some of the Directors of the earlier Board of Directors of the Society, despite being similarly situated like the petitioner, have been allowed to contest the election scheduled on 21.01.2024, this Court under its order dated 19.01.2024 provided in the interim, that the Election Authority shall provisionally allow the petitioner to contest the election of the Society scheduled on 21.01.2024, after accepting the nomination paper. But, the results of the election in so far as the petitioner and one post of Director in the Board of Director of the Society are concerned, shall not be declared without the leave of the Court.
5. It is submitted at the bar by both the learned counsel for the parties that the election had already taken place and the petitioner had participated in the election. However, the result had not yet been declared in respect of the petitioner though the Board of the Cooperative Society had already been formed.

6. In view of the aforesaid, in the considered opinion of this Court, except allowing the respondents to count the votes so far relating the post in question, no further direction can be issued in this writ petition, inasmuch as even if, the petitioner is defeated in the election, this Court cannot adjudicate any dispute relating to the election in this proceeding and the respondents have agreed to count the votes and not to continue insisting upon their earlier action i.e. not to allow the petitioner to file nomination.
7. In view of the aforesaid, leave is granted to the respondent Nos. 4 and 5 to declare the withheld result which was withheld in terms of this Court's order dated 19.01.2024 and thereby fill up the vacant post that was kept vacant under the interim order of this Court.
8. Accordingly, the writ petition stands disposed of.

JUDGE

Comparing Assistant