

GAHC010223042023



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

Case No.: WP(C)/2817/2023

HARIPADA DAS
C/O SHASHIBHUSHAN DAS
R/O VILL-SATIRSANAGAR
P.O.-ANIL NAGAR
V.T.C.
NIZNABIN
P.S.-RAM KRISHNA NAGAR
DIST-KARIMGANJ
ASSAM
PIN-788156

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM
CO-OPERATION DEPARTMENT
DISPUR
GUWAHATI-781006

2:THE REGISTRAR OF CO-OPERTAIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
KARIMGANJ
ASSAM

4:THE RETURNING OFFICER
GANDHIRAM CO-OPEARTIVE SOCIETY LIMITED
P.O.-NETAJI NAGAR
DIST-KARIMGANJ

ASSAM
PIN-788166

5:MD. AKLAS UDDIN
S/O ARMAN ALI
R/O VILL-DARGARBOND
V.T.C. DALOO PART-II
P.O.-MUKTARANPUR
DIST-KARIMGANJ
ASSAM
PIN-788150

6:SAURAV DAS

AGED ABOUT-31 YEARS
SON OF LATE SAMIRAN DAS
RESIDENT OF VILLAGE- TENGARGOOL
POST OFFICE- CHAMELA BAZAR
POLICE STATION- RAMKRISHNANAGAR
DISTRICT- KARIMGANJ
ASSAM
PIN-788166.

Linked Case : WP(C)/3499/2023

SAMBHU BAISHNAB
SON OF LATE DHARANI KANTA BAISHNAB

RESIDENT OF VILL. BISHNUPUR
NAYADASGRAM P.O. ANILGARH
P.S. RAMKRISH NAGAR

DISTRICT KARIMGANJ
ASSAM

PIN-788156.

VERSUS

THE STATE OF ASSAM AND 22 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF
ASSAM

CO-OPERATION DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE REGISTRAR

CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-781022.

3:THE ASSISTANT REGISTRAR

CO-OPERATIVE SOCIETIES

RAMKRISHNA NAGAR

KARIMGANJ
ASSAM

PIN-788166.

4:THE RETURNING OFFICER

GANDHIGRAM CO-OPERATIVE SOCIETY LTD.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

5:THE PRESIDENT

GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

6:THE SECRETARY

GANDHIGRAM CO - OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT - KARIMGANJ
ASSAM
PIN- 788166.

7:SMTI. SUKLA SINHA

W/O. SRI. KISHOR KUMAR SINHA

VILL. GORARBOND

P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

8:SOURAV BAISHNAB

S/O. LATE HARLAL BAISHNAB

VILL. BISHNUPUR

P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

9:SWAPNAJIT PAUL

S/O. SRI. SUDHINDRA PAUL

VILL. AND P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

10:BINAYAK CHAKRABORTY

S/O. SRI.LAXMI MANGAL CHAKRABORTY

VILL. GANDHINAGAR
P.O. NETAJINAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

11:JAYANTA DAS

S/O. LATE JYOTISH CH DAS

VILL. KALIBARI BAZAR

P.O. NETAJINAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

12:ASHIM KUMAR ROY

S/O. SRI. ANANDA RAM ROY

VILL MANIKNAGAR
P.O. NETAJINAGAR

DISTRICT-KARIMGANJ
ASSAM
PIN-788166.

13:SAURAV DAS

S/O. LATE SAMIRAN DAS

KALINAGAR GRAM PANCHYAT

RAMKRISHNA NAGAR CO-OPERATIVE SOCIETY

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

14:RAJESH DAS

S/O. LATE RAJENDRA DAS

GAMARIA GRAM PANCHYAT

VILLAGE-NABIN GRAM

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

15:SHILONG KHASIA

C/O. GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

16:ANJALI MISHRA

C/O- GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

17:RATISH CH DEB

S/O. LATE TARANATH DAS

VILLAGE-NETAJINAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

18:FAZLUL HOQUE

S/O. LATE ABDUL LATIPH

VILLAGE-KHALAGRAM

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

19:PRADIP DAS

C/O. GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

20:DOSHOROTH SUKHLABAIDYA

C/O. GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR
DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

21:FARUKH AHMED

C/O. GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

22:SURMANI SARKAR

C/O. GANDHIGRAM CO-OPERATIVE SOCIETY.
P.O. NETAJI NAGAR

DISTRICT-KARIMGANJ
ASSAM

PIN-788166.

23:MD. AKLAS UDDIN
SON OF ARMAN ALI

VILL. DARGARBOND
VTC DALOO PART-II
P.O. MUKTARANPUR

DISTRICT KARIMGANJ
ASSAM

PIN-788150.

Advocate for the Petitioners : Mr. M. Nath, Advocate
Mr. S. Banik, Advocate

Advocate for the Respondents : Mr. S. R. Talukdar, Advocate
Mr. J. M. A. Choudhury, Advocate
Mr. A. R. Bhuyan, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 12.08.2024

Date of Judgment : 12.08.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Nath, the learned counsel appearing on behalf of the petitioner in WP(C) No.3499/2013 and Mr. S. Banik, the learned counsel appearing on behalf of the petitioner in WP(C) No.2817/2023. Mr. S. K. Talukdar, the learned counsel appears on behalf of the Cooperation Department of the Government of Assam and its Officials; Mr. A. R. Bhuyan, the learned counsel appears on behalf of one of the private respondents, namely, Shri Sourab Das and Mr. J. M.A. Choudhury, the learned counsel appears on behalf of the Secretary, Gandhigram Cooperative Society.

2. The instant proceedings came up before this Court for consideration of the Interlocutory Application being I.A.(C) No.3035/2023 seeking vacation, modification and/or alteration of the order dated 19.06.2023 passed in WP(C) No.3499/2023 wherein as an interim measure this Court had stayed the approval of the proceedings of the AGM for the year 2023-24 including the formation of the Board Of Directors of the Gandhigram Cooperative Society Limited for the term 2023-24 to 2027-28. Taking into account that any decision rendered in the Interlocutory Application would amount to entering in the merits, this Court with the consent of the learned councils for the parties has taken up both the writ petitions for disposal at this stage.

3. From the materials on record, it is seen the present dispute surrounds around the Election as well as the AGM of a Society in question is in the name and style of Gandhigram Samabai Samiti Limited which is registered under the Assam Cooperative Societies Act, 1948 bearing registration. No.K-19 dated 10.09.1973. The erstwhile President and the Secretary of the Gandhigram Samabai Samiti Limited (herein after referred to as the 'Society') had issued a notice on 25.04.2023 intimating all concerned that on the basis of the decision taken by the Executive Committee of the said Society, the election of the Board of The Directors of the Society for the period from 2023-2028 would be held on 10.05.2023 between 09:00 a.m. to 12:00 noon at the Netaji High School to be followed by polling between 12:00 noon to 04:00 p.m. It is relevant to observe that at Clause No.9 of the enclosure to the notice dated 25.04.2023, it was mentioned that the counting of the votes would start at 10:00 a.m. on 12.05.2023.

4. One shareholder, namely, Md. Aklas Uddin who is the Respondent No.23 in WP(C) No.3499/2023, being aggrieved in the manner by which the electoral rolls were prepared approached this Court by filing a writ petition being WP(C) No.2439/2023 wherein Notice dated 25.04.2023 was challenged.

5. This Court, upon hearing the learned counsels vide an order dated 08.05.2023 disposed of the said writ petition holding inter-alia that as the election was to be held in two days time, the question of stay of the election to be held under the aegis of the Election Authority, i.e. the Registrar or its representative, did not arise. This Court further observed that the election to the Board of Directors of the Society be held on 10.05.2023. However, the Registrar of the Cooperative Society along with the Assistant Registrar was directed not to give any approval to the election/AGM to be held on 10.05.2023 prior to

deciding the grievances of the petitioner in terms of Rule 27 of the Assam Cooperative Societies Election Rules, 2019 (for short, 'the Rules of 2019'). The petitioner in the said proceedings was directed to submit a representation along with the writ petition with regard to his grievance, before the Registrar of Cooperative Societies between 11.05.2023 and 13.05.2023. Paragraph No.4 of the said order dated 08.05.2023 being relevant is reproduced herein under:-

“4. On considering the fact that the election is to be held in two days time, this Court is not inclined to stay the election to be held under the aegis of the election authority, i.e., the Registrar or his representatives. Accordingly, the election to the Board of Director of the Gandhigram Samabhai Samittee Ltd. is allowed to be held on 10.05.2023. However, the Registrar, i.e., the respondent No. 2 and respondent No. 3 shall not give any approval to the election/AGM to be held on 10.05.2023, prior to deciding the grievance of the petitioner in terms of Rule 27 of the 2019 Rules. The petitioner will accordingly submit a representation along with this writ petition with regard to his grievance, before the respondent No. 2 between 11.05.2023 and 13.05.2023.”

At this stage, this Court finds it very pertinent to observe that the petitioners before this Court in both the writ petitions neither did challenge the notice dated 25.04.2023 whereby the elections were notified to be held nor they were parties to the writ petition being WP(C) No.2439/2023. This Court during the course of hearing enquired with the learned counsels appearing on behalf of the parties as to when the election results were declared. It was submitted at the Bar that on the date of the elections, only 15 share holders submitted nominations against the 15 posts of Directors who were to be elected and in view of Rule 13 (a) of the Rules of 2019, the Returning Officer declared them as elected on 10.05.2023 itself. Rule 13 (a) of the Rules of 2019 being relevant is quoted herein below:-

13. Declaration of Election Result-

(a) If the number of valid nomination papers is equal to the total numbers of members to be elected to the Board of Directors, the Returning Officer shall declare such candidate to be duly elected to the Board of Directors in the Annual General Meeting.

6. The record further transpires that the petitioner in WP(C) No.2439/2023, on 12.05.2023 had submitted a representation. However, the said petitioner withdrew the said representation as would be seen from a perusal of the impugned order dated 26.05.2023 itself. It is further seen that the petitioner in both the writ petitions, i.e. WP(C) No.2817/2023 and WP(C) No.3499/2023 along with six others submitted a representation which was received by the Senior Assistant on 15.05.2023 at 11:40 a.m. This representation however was not taken into consideration by the Registrar of Cooperative Society in its impugned order dated 26.05.2023 and the AGM of the Society in question held on 10.05.2023 was approved. Being aggrieved, both the writ petitions were filed challenging the impugned order dated 26.05.2023 primarily on the ground that the elections were held on the basis of defective electoral rolls of the Society.

7. This Court have heard the learned counsels appearing on behalf of the petitioners as well as the respondents and have given anxious considerations to their respective submissions. From a perusal of the materials on record, it is clear that the petitioner in WP(C) No.2439/2023 is not before this Court challenging the impugned order dated 26.05.2023 by which his representation was held to be withdrawn. It is also very pertinent to take note that the Rules of 2019 have been framed specifically to deal with the elections of a Cooperative Society. In terms with the said Rules of 2019, there is an effective machinery envisaged as to how the elections of a Cooperative Society can be challenged.

Rule 27 of the said Rules of 2019 being very relevant is reproduced herein under:-

“27. Redressal of Dispute.-

(a) Any dispute relating to election of a Cooperative Society may be submitted within 3 (three) days from the date of declaration of the results, before the Election Authority.

(b) The Election Authority, shall make an enquiry upon the dispute on the basis of the relevant records and pass necessary order(s).”

8. A perusal of the above Rule would show that any dispute relating to election of a Cooperative Society may be submitted within three days from the date of declaration of the results before the Election Authority. As already stated in the previous segment of the instant judgment, on 10.05.2023 itself, the election results were declared as there were only 15 nominations against 15 posts of Directors in terms with Rule 13 (a) of the Rules of 2019. Therefore, any shareholder aggrieved ought to have approached the Election Authority with 3 days from the date of declaration of the results. However, from the Annexure-G to the WP(C) No.3499/2023, it is seen that the petitioners in both the writ petitions before this Court submitted a joint representation which was received only at 11:40 a.m. on 15.05.2023. This delay in submission of the dispute was in clear violation to Rule 27 of the Rules of 2019, and as such, the said representation filed by the petitioners herein could not have been taken into account. It is also seen that the mandate of Rule 27 of the Rules of 2019 have not been challenged. In addition to that, the law is well settled that when the statute mandates a thing to be done in a particular manner, the same has to be done in the mandated manner or not at all.

9. Under such circumstances, this Court is of the opinion that the impugned order dated 26.05.2023 does not call for any interference.

10. Accordingly, this Court finding no merits in both the said writ petitions, the same stand dismissed.

11. Interim order, if any stands vacated.

JUDGE

Comparing Assistant