

GAHC010122432023



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

Case No. : WP(C)/3449/2023

MOTAHIR ALI TAPADAR AND 13 ORS
S/O- LATE AROB ALI TAPADAR,
VILL- BIJOYNAGAR, P.O- ANGLARBAZAR,
DIST- KARIMGANJ, ASSAM

2: ABDUL QUADIR TAPADAR
S/O- ABDUN NOOR TAPADAR

VILL- TIKARPARA

P.O- SRIGOURI

DIST- KARIMGANJ
ASSAM

3: MASADDAR ALI KHADIM
S/O- LATE MD. ALI KHADIM

VILL- KHADIMPARA
P.O- BADARPUR

DIST- KARIMGANJ
ASSAM

4: ABU BAKKAR
S/O- LATE ABDUL RAHMAN

VILL-ALEKHARGOOL
P.O- ANGLARBAZAR

DIST- KARIMGANJ
ASSAM

5: MOSRUL ISLAM
S/O- LATE ABDUL MOLIK

VILL- KHADIRMAN
P.O- BADARPUNGHAT

DIST- KARIMGANJ
ASSAM

6: MUSTAFA AHMED
S/O- LATE AROB ALI TAPADAR

VILL- DIZIRPAR
P.O- BADARPUR

DIST- KARIMGANJ
ASSAM

7: FARHANA BEGOM TAPADAR
S/O- ABDUL QUADIR TAPADAR

VILL- TIKARPARA

P.O- SRIGOURI

DIST- KARIMGANJ
ASSAM

8: MANOWARA BEGUM
D/O- LATE LACHU SHEIKH

VILL- KUCHIRKONA

P.O- SRIGOURI

DIST- KARIMGANJ
ASSAM

9: MITALI MALAKAR
W/O- SUDIP MALAKAR

VILL- KUCHIRKONA

P.O- SRIGOURI

DIST- KARIMGANJ
ASSAM

10: MONJUR AHMED
S/O-ABDUL KARIM

VILL-ALEKHARGOOL
P.O- ANGLARBAZAR

DIST- KARIMGANJ
ASSAM

11: ABDUL HAMID
S/O- LATE BASARAT ALI

VILL-KUNARPARA
P.O-UMARPUR
DIST- KARIMGANJ
ASSAM

12: RAHAN UDDIN LASKAR
S/O- LATE AKKADAS ALI

VILL AND P.O-UMARPUR
DIST- KARIMGANJ
ASSAM

13: SAYED SAHIB UDDIN
S/O- LATE SAYED ANDUL MUSSABAR

VILL-DEORAIL
P.O-BADARPUR
DIST- KARIMGANJ
ASSAM

14: MD. SOFRUL ISLAM
S/O- AJMOL ALI

VILL-BUNDASHAIL
P.O AND P.S- BADARPUR
DIST- KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS

REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, TO THE
GOVERNMENT OF ASSAM, COOPERATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE ADDITIONAL CHIEF SECRETARY

TO THE GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-6

3:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM KHANAPARA
GUWHATI-22

4:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR
ASSAM

5:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
KARIMGANJ
ASSAM

6:THE RETURNING OFFICER
EAST BADARPUR COOPERATIVE SOCIETY LTD.
BADARPUR
KARIMGANJ
ASSAM

7:THE ONE MAN COMMITTEE
OF EAST BADARPUR COOPERATIVE SOCIETY LTD.
BADARPUR
KARIMGANJ
ASSA

Advocate for the Petitioner : MR. P HAZARIKA

Advocate for the Respondent : SC, CO OP

Linked Case : WP(C)/2171/2023

EAST BADARPUR CO- OPERATIVE SOCIETY LTD. AND 2 ORS.
BADARPUR
DISTRICT- KARIMGANJ
ASSAM

REPRESENTED BY SYED KAMAR UDDIN- 63 YEARS
S/O LATE SYED ABDUR REZZAK
R/O VILLAGE- BUNDASIL

P.O. AND P.S.- BADARPUR

DISTRICT- KARIMGANJ
ASSAM.

2: A.M. MAHBUBUL HASSAIN
S/O LATE MATAHIR ALI

R/O VILLAGE- DEORAIL

P.O.- BADARPUR

DISTRICT- KARIMGANJ
ASSAM.

3: SUNIL CH. MALAKAR
S/O LATE BROJENDRA MALAKAR

R/O VILLAGE- KUCHUKONA

P.O.- SRIGOURI

DISTRICT- KARIMGANJ
ASSAM.
VERSUS

THE STATE OF ASSAM AND 6 ORS.
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 ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR
CACHAR
PIN- 788001.

4:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
KARIMGANJ
DISTRICT- KARIMGANJ
ASSAM.

5:THE RETURNING OFFICER
EAST BADARPUR CO-OPERATIVE SOCIETY LTD.
FOR ELECTION OF THE SOCIETY HELD ON 05.03.2023 NAMELY-
SRI TAPAN MALAKAR

SENIOR INSPECTOR/ AUDITOR OF CO-OPERATIVE SOCIETIES
KARIMGANJ

OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
KARIMGANJ.

6:THE ONE MAN COMMITTEE
EAST BADARPUR CO-OPERATIVE SOCIETY LTD.
BADARPUR
NAMELY- SMTI. RAJKUMARI NANDA SANA

SENIOR INSPECTOR/ AUDITOR OF CO-OPERATIVE SOCIETIES
KARIMGANJ

OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
KARIMGANJ.

7:THE SECRETARY
EAST BADARPUR CO-OPERATIVE SOCIETY
P.O.- BADARPUR

DISTRICT- KARIMGANJ
ASSAM

PIN- 788806.

8:ZILLUN NOOR CHOUDHURY

AGED ABOUT 32 YEARS
SON OF MOSTUFA UDDIN CHOUDHURY
VILLAGE- DIGHIRPAR
PO AND P.S -BADARPUR
KARIMGANJ
ASSAM.

9:ASAD UDDIN

AGED ABOUT 40 YEARS

SON OF LATE ABDUL KHALEK
VILLAGE- DIGHIRPAR
P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
10:MOHAMMAD RUBEL AHMED

AGED ABOUT 35 YEARS
SON OF LATE MOKLIS ALI
VILLAGE- BUNDASHIL
P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
11:IFTIQUAR ALOM CHOUDHURY

AGED ABOUT 31 YEARS
SON OF LIYAKTH HUSSAIN CHOUDHURY
VILLAGE- DIGHIRPAR
P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
12:AHMED ZAKARIA

AGED ABOUT 37
SON OF JOMIL UDDIN
VILLAGE-DIGHIRPAR
P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
13:SAYADUR RAHMAN

AGED ABOUT 36 YEARS
SON OF ATAUR RAHMAN
VILLAGE- DIGIRPAR P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
14:AHMED SHAJAN CHOUDHURY

AGED ABOUT 37 YEARS
SON OF LATE AYAS ALI
VILLAGE- DIGHIRPAR
P.O. AND P.S.- BADARPUR
KARIMGANJ
ASSAM.
15:RAFIQUEUDDIN CHOUDHURY

AGED ABOUT 45 YEARS
SON OF LATE NOOR UDDIN

VILLAGE- DIGHIRPAR
P.O. AND P.S.-BADARPUR
KARIMGANJ
ASSAM.

Advocate for : MR H R A CHOUDHURY

Advocate for : SC

CO OP appearing for THE STATE OF ASSAM AND 6 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 30.05.2024

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. F.U. Barbhuiya, learned counsel for the petitioners in WP(C)/2171/2023 and Mr.P.Hazarika, learned counsel for the petitioners in WP(C)/3449/2023. Also heard Mr. S.K.Talukdar, learned Standing Counsel, Co-Operation Department and Mr. R.A. Mazumder, learned counsel for respondent Nos. 8 to 15.

2. The WP(C)/2171/2023 is filed by the petitioners Nos. 1 to 3, who are the Chairman, Vice-Chairman and one the Directors of East Bardarpur Co-Operative Society Ltd., Badarpur at the relevant point in time. The petitioners grievance are with regard to the impugned order dated 31.03.2023, whereby the Zonal Joint Registrar of Co-Operative Societies, Silchar Zone, Silchar ordered that affairs of the society will be run by the Senior Inspector of the Office of the Assistant Registrar of Cooperative Society as a one man committee and that the same was ordered in view of the failure of the Managing Committee/Board of Directors to hold the Annual General Meeting (AGM) and the Committee therefore stood dissolved automatically. The learned Senior counsel appearing for the petitioners submits that the AGM of the committee in which the petitioners are the Chairman, Vice-Chairman and Director of the East Bardarpur

Co-Operative Society Ltd., Badarpur was held on 11.03.2018. As per the provisions of Section 31 of the Assam Co-Operative Societies Act, 2007, the term of the cooperative society is for a period of five years. As such, the election of the cooperative society and the board ought to have been held by 11.03.2023 and in order to hold the AGM as per the provisions of the Act, the notification was issued where AGM was declared to be held on 11.09.2022. It was decided that the AGM of the committee was held on 11.09.2022 and that is a part of the record. Thereafter by Notice issued by the Secretary of the Society, Election of the Cooperative society was scheduled to be held on 05.03.2023 at 10:00 a.m. to 04:00 p.m. for the session 2023-24 to 2027-28. It was mentioned in the notice that the Nomination Papers would be received on 19.02.2023.

3. In terms of the said Notice, on 19.02.2023, a total of 15 nominations were filed for the 15 members of the committee. The Senior counsel submits that under Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 if the number of valid nomination papers is equal to the total number of members to be elected to the Board of Directors, the Returning Officer should declare the candidates to be elected to the Board of Directors in the AGM. It is submitted that in terms of Rule 13 (a) the Returning officer ought to have declared the candidature of the 15 members who had filed their nominations. However, that was not done and as scheduled, the election was sought to be held on 05.03.2013, but because of lack of quorum, the meeting stood adjourned and could be held in the next week, same day, same time and same venue.

4. The learned Senior Counsel submits that as per the notice it means that from 05.03.2013 the election got deferred to 12.03.2013. As a consequence thereof, the term of the Board, which was elected on 11.03.2018 stood expired on 11.03.2023. The learned Senior Counsel therefore submits that it is not the

fault of the Board that the election could not be held as per the provision of the Act, rather because of lack of quorum for the AGM the election of the Board of Director stood deferred to after one week, which is 12.03.2023. Although the prayer is made in the writ petition is for seeking a direction to set aside the impugned order dated 31.03.2023 and also for a further direction to the respondents to declare the result of the Election of the Board of Directors in terms of East Badarpur Co-Operative Societies Ltd. in terms of Rule 13 and allow the Board of Directors to elect the President and Vice President from amongst its Directors. The further prayer made is to restraint the one man committee from conducting the Election a fresh in the East Badarpur Co-Operative Societies and to allow the 15 elected Board of Directors to form the committee as per the election of the nomination dated 19.02.2023. These two prayers at this stage are not pressed by the writ petitioner.

5. The learned Senior Counsel for the petitioners submits that at this stage, his limited prayer is that the findings of the Zonal Joint Registrar of the Co-operative Societies, Silchar Zone vide the impugned order dated 31.03.2023 that the managing committee/BOD of the East Badarpur Co-Operative Societies stood automatically dissolved on their failure to constitute the new managing committee/BOD be interfered with as it is factually incorrect as there was no failure on the part of the petitioners to hold the election. In fact, all steps were taken to proceed with the election. However, because of the lack of quorum, it had to be deferred for one week. In any view of the matter, in respect of the 15 persons who filed the nominations, had the Returning Officer declared the result as per Rule 13 (a), then this 15 person would have automatically formed the committee.

6. Mr. S.K.Talukdar, learned Standing Counsel, Co-Operation Department on

the other hand submits that at this stage, the prayer of the writ petitioner cannot be allowed as the one man committee has already been appointed and in terms of Section 41 (6) the one man committee can hold AGM as per the said provision. And in that AGM the declaration of the election can be done. He submits that the one man committee be directed to hold the AGM and will declare the results in that AGM.

7. Mr. R.A. Mazumder, learned counsel for respondent Nos. 8 to 15 on the other hand submits that as shareholders there were many anomalies which have been noticed. And therefore, since the one man committee is apparently managing the affairs of the society, direction may be issued to hold a fresh election.

8. WP(C)/3449/2023 on the other hand are filed by the 14 members of co-operative society, who claim to be the persons who had filed nominations and pursuant to the notice issued by the Returning Officer. Referring to Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 it is submitted that since there are 15 posts and 15 persons have already filed nominations the Returning Officer ought to have declared the results on that day. That not having been done as the election stood postponed because of the lack of quorum. It is submitted that since the mandate of Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 specifically provides that if the number of nominations filed are equal to the number of posts available, then the returning officer is bound to declare the results and in that view of the matter, the present 14 writ petitioners are persons who had filed the nominations in respect of the 15 posts and the nominations not being greater than the number of posts, it was incumbent on the registrar to declare the results.

9. The learned counsels for the parties have been heard. Pleadings on record

have been carefully perused.

10. From the facts narrated what is seen is that the earlier Board had issued notices for holding elections on 05.03.2023 and for which nomination was fixed on 19.02.2023. There is no dispute that on 19.02.2023 for the 15 posts 15 nomination papers were filed. In this context, a reference to Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 is relevant. As per Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 if the number of valid nomination papers is equal to the total number of members to be elected to the Board of Directors, the Returning Officer shall declare such candidates to be elected to the Board of Directors in the AGM. Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 is extracted 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.

(b).....”

11. A perusal of Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 reflects that the mandate of Rule 13 is for the returning officer to declare the candidates to be elected if the valid nomination papers filed are equal to the total number of members to be elected to the Board of Directors. As discussed above, there is no dispute that on 19.02.2023, the total nomination papers filed were equal to the number of members to be elected to be the Board of Directors, which is 15. 14 of such members, are before this court by filing WP(C)/3449/2023. One elected member, however, is arrayed as respondent in WP(C)/2171/2023. From the mandate of Rule 13 (a) of the Assam

Co-Operative Societies Election Rules, 2019, it is discernible that if the nomination papers are found to be valid and equal to the number of members to be elected, then the returning officer is duty bound to declared candidate to be duly elected to the Board of Directors in the AGM. This admittedly was not done by the Returning Officer.

12. The Returning Officer on 05.03.2023 had given a endorsement in the record of minutes that to the following effect:-

“In today’s meeting only 36 Nos. of members found to be present from 10 A.M to 12 P.M which could not attain quorum. There for the meeting stands adjourned. The adjourned meeting will be held in the next week same day same time and same venue. ”

13. In pursuance to the endorsements given by the Returning Officer a Notice was issued to that effect by the Secretary.

14. Having heard the rival submissions of the parties and upon careful perusal of the pleadings on record it is evident that as per the Rule 13 (a) once the valid nomination papers are found to have been submitted by the members who are seeking elections to the Board of Directors, and if the same are found to be equal to the number of posts available, which is 15 in the present case, the Returning Officer is required to declare the results then and there. Had the Returning Officer declared the results then and there, the petitioners in WP(C)/3449/2023 and respondent No.8 in WP(C)/2171/2023 would have been declared elected members of the Board of Directors of the East Badarpur Co-Operative Societies on 19.02.2023 and thereafter the AGM could have been held and the election results could have been notified in the House in the AGM.

15. A reference to Section 41 of the Assam Co-Operative Societies Act, 2007 is

also required to be made. As per Section 41 (2) the election of the Board of Directors to the Board shall be held before the expiry of the term of the Board to ensure that the duly elected members of the Board assume office immediately upon expiry of the office of the members of the outlying Board. From the facts narrated above and as is evident from the pleadings on record, it is seen that there was an attempt to hold the elections on 05.03.2023, but for the lack of quorum it was deferred for one week thereafter, which is 12.03.2023. What is also not disputed is that on 19.02.2023, there were 15 persons who had filed nominations for the 15 post of Board of Directors. In terms of Rule 13 (a) of the Assam Co-Operative Societies Election Rules, 2019 once the nominations are found to be valid and equal to the number of posts, there is a duty cast upon the Returning Officer to declare the results then and there. Had the results been declared by the Returning Officer on 19.02.2023 then the new Board of Directors would have been considered to have been elected in terms of Rule 13 (a). The only requirement which was left to be carried out was holding the AGM and thereafter declaration of the election results in the AGM. However, the same was not done and by the impugned order the one man committee was appointed and who is currently managing the affairs of the committee.

16. Under such circumstances, this Court will have to hold that there is indeed no failure on the part of the outgoing committee to hold the election of the Board of Directors in as much as it was the failure of the Returning Officer to declare the valid nominations of the persons who had filed their nominations, which prevented the process of the constitution of the new Board of Directors.

17. Under such circumstances, the finding arrived at by the Zonal Joint Registrar of Cooperative Societies in the impugned order dated 31.03.2023, and that the Managing Committee/BOD of the East Badarpur Co-Operative Societies

had failed to constitute the new Managing Committee/Board of Directors within their term, which is on 11.03.2023, is not a correct finding on facts. The same shall cease to have any effect hereafter. However, what is also seen from the facts of the case is that as on date the Annual General Meeting has not yet been held and the results of the Board of Director consequently could not be declared as required. The nomination of the new Board of Directors, whose nominations have not been held to be improper or incorrect, are also not under challenge before this Court at this stage.

18. Consequently, in terms of the mandate of the Act, a Returning Officer will now have to be appointed to declare the results of the Board of Directors in the Annual General Meeting which will now be held by the one man committee within a period of 30 (thirty) days, from the date of receipt of certified copy of this order.

19. The directions as above be carried out forthwith and once the AGM is held and the results are declared, the new Board of Directors or Managing Committee will constitute the board and manage the affairs thereafter in terms of the provisions of the Act.

20. In terms of the above directions, the writ petition stands allowed and disposed of.

21. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant