

GAHC010157212024



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

Case No. : WP(C)/3923/2024

THE BOARD OF DIRECTORS OF JAMADARHAT SAMABAI SAMITI LTD
AND ANR
HAVING ITS REGISTERED OFFICE AT VILL- PORAVITA BAZAR,
P.O.- JAMADARHAT,
DISTRICT- DHUBURI, (BEING REPRESENTED BY ITS CHAIRMAN).

2: SADDAM HUSSAIN
S/O- ABDUL KHALEQUE
VILLAGE- PORAVITA
P.O.- JAMADARHAT
DISRICT- DHUBRI
ASSAM
PIN- 783380.
(CHAIRMAN OF THE PETITIONER NO. 1 SOCIETY)

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF COOPERATIVE AND CONSUMER AFFAIRS,
DISPUR, GUWAHATI-06.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 781022.

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES (ARCS)
SOUTH SALMARA
MANKACHAR.

4:THE SECRETARY
JAMADARHAT SAMABAI SAMITI LTD.

VILL.- PORAVITA BAZAR
P.O.- JAMADARHAT
SOUTH SALMARA
PIN- 783380.

5:SAHIDUL ALOM
RETURNING / PRESIDING OFFICER OF AGM/ ELECTION OF JAMADARHAT
GPSS OF 2024
SR. INSPECTOR IN THE OFFICE OF ARCS
SOUTH SALMARA.

6:PRANTIK CHETIA
ASSISTANT RETURNING OFFICER OF AGM/ ELECTION OF JAMADARHAT
GPSS LTD.
OF 2024
JR. INSPECTOR IN THE OFFICE OF THE ARCS
SOUTH SALMARA

For the petitioner (s) : Mr. J. M. A. Choudhury, Advocate

For the respondent (s) : Mr. S. K. Talukdar, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

05.08.2024

Heard Mr. J. M. A. Choudhury, the learned counsel appearing on behalf of the petitioners and Mr. S. K. Talukdar, the learned counsel appearing on behalf of the respondent Nos.1, 2, 3, 5 & 6.

2. Taking into account that the presence of the respondent No.4 is not relevant and the urgency of the relief sought for, this Court takes up the instant writ petition for disposal at the motion stage itself.

3. The petitioners herein had approached this Court on an earlier occasion seeking extension of time for holding of the AGM including the election of the Jamadarhat Samabai Samiti Ltd. The said writ petition was

registered and numbered as WP(C) No.3715/2024. When the matter was listed before this Court on the 24.07.2024, the counsel appearing on behalf of the petitioners in the said writ petition submitted that in view of the improving flood situation, he would not like to press the writ petition. It was also informed to this Court that the notice in terms with the provisions of the Assam Cooperative Societies Act, 2007 would be issued on 25.07.2024 thereby to hold the meeting on 10.08.2024 in view of a resolution already passed.

4. In view of the said submission, this Court disposed of the said writ petition vide an order dated 24.07.2024 on withdrawal with a further observation that the Cooperation Department of the Government of Assam shall provide the necessary aid to the petitioners so that the meeting can be held on 10.08.2024. Post the disposal of the said writ petition vide the order dated 24.07.2024, the notice was issued on 25.07.2024 thereby intimating all the shareholders that the AGM along with the election would be held on 10.08.2024. It is the case of the petitioners that the respondent Nos.5 & 6 who are the Returning Officer as well as the Assistant Returning Officer for reasons best known, stayed the nomination process by the notice dated 01.08.2024 which is the subject matter of challenge in the instant writ petition.

5. Mr. J. M. A. Choudhury, the learned counsel appearing on behalf of the petitioners submitted that the shareholders interested in participating in the election duly went to submit the nomination papers before the respondent Nos.5 & 6. However, they refused to accept, and on the other hand, stayed the nomination process by the impugned notice. The learned counsel for the petitioners submitted that the said respondent Nos.5 & 6

could not have exercised such a jurisdiction in view of the clear mandate of the provisions of the Assam Cooperative Societies Act, 2017 as well as the Assam Cooperative Society Election Rules, 2019.

6. This Court has also heard Mr. S. K. Talukdar, the learned counsel appearing on behalf of the Cooperation Department.

7. A perusal of the notice dated 25.07.2024 clearly shows that it was notified that the AGM/election of the Society was scheduled to be held on 10.08.2024 and the date and time for submission of the nomination was fixed on 01.08.2024 from 10:00 a.m. to 01:00 p.m. The date for withdrawal of the nomination was fixed on 03.08.2024 and the AGM would be held from 10:00 a.m. to 12:00 p.m. on 10.08.2024 and the election would be held from 01:00 p.m. to 05:00 p.m. on the same date. In pursuance to the said notice, the Assistant Registrar of Cooperative Society duly passed an order on 29.07.2024 fixing the schedule for submission of the nomination as well as for scrutiny of nomination papers. In addition to that, the date of the election and the time of the election was also notified. This Court further has perused the impugned notice which has been enclosed as Annexure-10 as well as also the scan copy of the notice which has been enclosed as Annexure-11 to the writ petition. Taking into account that it was duly notified that the nomination papers were to be received from 10:00 a.m. to 01:00 p.m. on 01.08.2024, it shocks and surprises this Court by the action on the part of the respondent Nos.5 & 6 to hurriedly cancel the nomination process. Even the scan copy of the notice which has been enclosed as Annexure-11 shows that the scan copy was received on 08.01.2024 at 12:05 p.m. which therefore shows that even prior to the period stipulated in the

notice dated 25.07.2024 as well as the order dated the 29.07.2024, the respondent Nos.5 & 6 have cancelled the nomination process.

8. Under such circumstances, in the opinion of this Court, the said action on the part of the respondent Nos.5 & 6 to cancel the nomination process is ex facie bad in law and liable to be interfered with. Consequently, the impugned notices, i.e. Annexure-10 and Annexure-11 are both set aside and quashed.

9. This Court also takes note of that on 10.08.2024 is the date fixed for holding the AGM as well as the election. The order dated 29.07.2024 as well as the notice dated 25.07.2024 duly stipulates the same. The nominations have not yet been received taking into account the haste shown by the respondent Nos.5 & 6 to cancel the nomination process.

10. Under such circumstances, this Court grants the liberty to the petitioners to issue a fresh notice by tomorrow, i.e. on 06.08.2024 thereby fixing the AGM as well as the election on or before 18.08.2024. The petitioners immediately upon issuance of the said notification shall inform the Cooperation Department who shall pass a due order for appointment of the Returning Officer as well as the Assistant Returning Officer as well as the schedule of the election to the petitioners Society.

11. In view of the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant