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

Case No. : WA/351/2024

JAHIR UDDIN LASKAR AND 6 ORS
S/O LATE ABDUL REZAK LASKAR, R/O ALGAPUR PART-III, HAILAKANDI,
DIST-HAILAKANDI, ASSAM

2: ANWAR UDDIN LASKAR
S/O LATE SURMAAN ALI LASKAR
R/O ALGAPUR PART-III
HAILAKANDI
DIST-HAILAKANDI
ASSAM

3: HILAAL UDDIN BARBHUIYA
S/O LATE NIMAAR ALI BARBHUIYA
R/O MOHANPUR PART-III
HAILAKANDI
DIST-HAILAKANDI
ASSAM

4: LUTFUR RAHMAN BARBHUIYA
S/O ALAUDDIN BARBHUIYA
R/O MOHANPUR PART-III
HAILAKANDI
DIST-HAILAKANDI
ASSAM

5: TAJ UDDIN BARBHUIYA
S/O LATE KUTUB ALI BARBHUIYA
R/O MOHANPUR PART-III
HAILAKANDI
DIST-HAILAKANDI
ASSAM

6: DILWAR HUSSAIN BARBHUIYA
S/O LATE MOIN UDDIN BARBHUIYA

R/O MOHANPUR PART-III
HAILAKANDI
DIST-HAILAKANDI
ASSAM

7: NAZMUL HUSSAIN MAZUMDER
S/O JALAL UDDIN MAZUMDER
R/O MOHANPUR PART-VI
HAILAKANDI
DIST-HAILAKANDI
ASSA

VERSUS

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

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
CO-OPERATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM

4:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

5:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
SILCHAR
ASSAM

6:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
HAILAKANDI
ASSAM

7:THE DISTRICT DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
HAILAKANDI
ASSAM

8:THE RETURNING OFFICER
AS PER ORDER BEARING MEMO NO. CCHF.12/73/PT.VI/311 DATED
30.01.2023

I.E. NURUL HASAN MOZUMDER
SENIOR INSPECTOR/AUDITOR OF COOPERATIVE SOCIETIES
HAILAKANDI, ASSAM

9:THE ASSISTANT RETURNING OFFICER AS PER ORDER BEARING MEMO
NO. CCHF.12/73/PT.VI/311 DATED 30.01.2023

I.E. SUHRAB KHALED MOZUMDER
SENIOR INSPECTOR/AUDITOR OF COOPERATIVE SOCIETIES
HAILAKANDI, ASSAM

10:NURUL HAQUE BARBHUIYA
S/O LATE IRSAD ALI BARBHUIYA
R/O VILL- MOHANPUR PART-II
MOHANPUR, DIST-HAILAKANDI
ASSAM

11:ALI AHMED
S/O LATE IRSAD ALI
R/O VILL- MOHANPUR PART-III
MOHANPUR, DIST-HAILAKANDI
ASSAM

12:JAMIR UDDIN LASKAR
S/O LATE HARUN RASHID LASKAR
R/O VILL- MOHANPUR PART-I
MOHANPUR, DIST-HAILAKANDI
ASSAM

13:DALIM UDDIN LASKAR
S/O LATE MONIR UDDIN LASKAR
R/O VILL- MOHANPUR PART-I
MOHANPUR, DIST-HAILAKANDI
ASSAM

14:TAJ UDDIN LASKAR
S/O LATE BASHIR UDDIN LASKAR
R/O VILL- MOHANPUR PART-VI
MOHANPUR
DIST-HAILAKANDI, ASSAM

15:SIRAJUL HAQUE BARBHUIYA
S/O LATE ABDUL KADIR BARBHUIYA
R/O VILL- MOHANPUR PART-VI
MOHANPUR
DIST-HAILAKANDI, ASSAM

16:SALIM UDDIN BARBHUIYA
S/O LATE MONIR UDDIN BARBHUIYA

R/O VILL- MOHANPUR PART-IV
MOHANPUR
DIST-HAILAKANDI
ASSAM

17:NASHIR UDDIN
S/O MUSLIM UDDIN
R/O VILL- MOHANPUR PART-IX
MOHANPUR
DIST-HAILAKANDI
ASSAM

18:ABDUL RAHIM
S/O MEKAI MIA
R/O VILL- MOHANPUR PART-X
MOHANPUR, DIST-HAILAKANDI
ASSAM

19:RIYAJUL HAQUE MAZUMDER
S/O LATE ABDUL AZIZ MAZUMDER
R/O VILL- ALGAPUR PART-V
MOHANPUR
DIST-HAILAKANDI, ASSAM

For petitioner(s)/appellant(s) : Mr. S. Banik, Advocate

For respondent(s) : Mr. G. Bordoloi, SC, Cooperation Deptt.
Mr. N. Das, GA, Assam
Mr. M. J. Quadir, Advocate

-BEFORE-
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

29.11.2024

With the consent of learned counsel appearing for the parties, the matter is heard finally at the admission stage itself.

This writ appeal is preferred by the appellants being aggrieved with the order dated 29.08.2024, passed by the learned Single Judge in WP(C) No. 7109/2023, whereby the learned Single Judge has dismissed the writ petition preferred by the appellants herein.

The appellants approached the writ court being aggrieved with the order dated 06.10.2023, passed by the Registrar of Cooperative Societies, Assam, whereby the Annual General Meeting (AGM)/Election of the Mohanpur Cooperative Society Limited (hereinafter referred to as "society"), held on 25.04.2023 had been cancelled while exercising the power under Section 40(4)(a) of the Assam Cooperative Societies Act, 2007 (hereinafter referred to as "Act of 2007").

The brief facts of the case are that an election notification was published on 30.01.2023 by the Assistant Registrar of Cooperative Societies, Assam, for conducting AGM and election for constitution of the Board of Directors of the said Society. It is not in dispute that the total number of Board of Directors of the said society is 15 and for the said 15 posts, 27 nomination papers were submitted by the Members/shareholders of the society under different categories, such as, weaker section, stronger Section, women category and SC/ST category. Out of those 27 nomination papers, 18 nomination papers were filed under weaker section category, 4 under stronger section category, four under women category and 1 under SC/ST category. However, out of the total 27 nomination papers filed, 12 nomination papers were rejected and 6 nomination papers were withdrawn and only 9 nomination papers under the above-referred different categories were accepted against those 15 posts of Directors.

The persons, whose nominations had been rejected, approached the Registrar of Cooperative Societies by way of filing an Election Petition alleging that their nomination papers had wrongly been rejected by invoking the power under Section 40(2) of the Act of 2007 in the guise that they had not attended to AGMs of the society in the last five years.

During the course of adjudication of the Election Petition, the Registrar of Cooperative Societies recorded a finding that the Attendance Register of AGM of the society pertaining to the years 2020-2021 and 2021-2022 were not available, as the same were missing, and in the absence of any such record it was not proper on behalf of the Presiding Officer to reject the nomination papers of 12 shareholders on the

ground that they had not attended two AGMs out of last five AGMs.

The learned Single Judge, after taking into consideration the said facts and circumstances, has refused to interfere with the order of the Registrar dated 06.10.2023, and has dismissed the writ petition, while observing as under:

“11. I have heard the learned counsel appearing on behalf of the parties and have given my anxious consideration to the respective submissions. From the facts above mentioned, it is clear that the in the said election proceedings 27 (twenty seven) shareholders have filed their nominations and out of that 6 (six) had withdrawn and 12 (twelve) were cancelled. From the materials on record it is apparent that out of the 12 (twelve) 10 (ten) were cancelled on the ground that they were not eligible in terms with Section 40(2) of the Act of 2007.

12. Under such circumstances, this Court finds it relevant to take note of Section 40(2) of the Act of 2007. A perusal of said provision stipulates that a member of a Cooperative Society shall be eligible for being chosen as the Director of the Cooperative Society, if such member has patronised the services of the Cooperative Society during the previous financial year to the extent and in the manner specified in the bye laws and have attended at least two Annual General Meetings in the previous five years. Under such circumstances what is required is that the share holder has to attend two Annual General Meetings in the 5 (five) years from the date of filing of the nomination. In that context, if this Court duly takes note of the impugned order, wherein the Registrar of the Cooperative Society had observed that the original proceeding of the Attendance Register of the year 2020-21 and 2021-22 have been lost by the Secretary of the Society on 01.02.2023. The Registrar of the Corporation Society further had also taken note of that the Xerox copy which were produced of the Attendance Register of 2020-21 and 2021-22 showed that some serial numbers in the Attendance Register present with the office are blank. On the other hand in some serial numbers, the names of the private Respondents in the Xerox copy of the Attendance Register was available. It was under such circumstances, the Registrar of Cooperative Society came to a finding that without the original

Attendance Register for the year 2020-21 and 2021-22 being available, relying on the photocopy of the Attendance Registrar would not be proper and accordingly held that as the nominations of the Respondent Nos. 10 to 19 were solely on the ground of violation under Section 40(2) of the Act of 2017 to which the respondent Nos. 10 to 19 cannot be held responsible, as the Secretary of the Cooperative Society had lost the Attendance Register, opined that the cancellation of the nomination of the respondent Nos. 10 to 19 was illegal. The said finding so arrived at, being finding of facts by the Registrar of Cooperative Society, this Court cannot interfere in exercise of its writ jurisdiction, unless there is any perversity shown in that regard. However nothing could be shown in that regard. Accordingly, this finding of fact do not call for interference.

13. The next question, therefore, arises which is the edifice on which the petitioners have approached is should the Registrar of Cooperative Society direct calling for a fresh election or should have exercised the powers under Section 41(9) of the Act of 2007.

14. Mr. S. Banik, the learned counsel appearing on behalf of the petitioner submitted that a perusal of the order dated 06.10.2019 would shows only 5 (five) numbers of appellant have challenged although there were 10 (ten) persons who filed the petition as would be apparent from the impugned order. On the other hand Mr. M. J. Quadir, the learned counsel appearing on behalf of the respondent Nos. 10 to 19 submitted that the respondent Nos. 10 to 19 have never withdrawn from the said election proceedings so filed.

15. In view of the above, if the cancellation of the nomination of the respondent No. 10 to 19 is held to be illegal, the nominations has to be therefore deemed to be valid as admittedly there were no other deficiency. In the Cooperative Society in question, admittedly there are fifteen posts of Board of Directors and if the ten nominations have been illegally rejected, it is the opinion of this Court that the Registrar of Cooperative Society has rightly set aside the entire election proceedings and directed holding of fresh elections. Under such circumstances, this Court finds no ground to interfere with the impugned order dated 06.10.2023.

16. This Court further takes note of that the vide the impugned order dated 06.10.2023 by the Registrar of Cooperative Society there was a direction for holding the fresh election by appointment of One Man Committee. At this stage, this Court finds it apt to refer to 41(6) of the Act of 2007 which categorically mandates that the one man Committee is required to hold the elections within a period of 3 (three) months.

17. This Court also finds it pertinent to observe that the spirit of the Cooperative Society is to have a democratic set up and as such any delay in not holding the elections as per the mandate as provided under 41(6) of the Act of 2007 touches upon the preambular object behind the Act of 2007. Accordingly, this Court directs that the Registrar of Cooperative Society to ensure that elections to the Cooperative Society i.e. Mohanpur S S Ltd. is held within a period of 90 days from the date of instant order. The One Man Committee who is In-Charge of the Cooperative Societies, is also directed to take effective steps in that regard.

Having heard the learned counsel appearing for the parties and after taking into consideration the material available on record, we are unable to take a different view than the view as has been taken by the learned Single Judge, because the fact remains that the Attendance Register/records of the society pertaining to the years 2020-2021 and 2021-2022 are not available and, in the absence of the same, the decision of rejecting the nomination papers of 12 Members/shareholders on the ground that they had not attended two AGMs out of five previous AGMs of the society, is arbitrary and erroneous.

With these observations, the writ appeal is dismissed.

The respondents are now free to conduct fresh AGM/election of the society, as directed by the learned Single Judge, within a period of 90 (ninety) days from today.

JUDGE

CHIEF JUSTICE

Comparing Assistant