

GAHC010274802023



2024:GAU-AS:8580

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

Case No. : WP(C)/7109/2023

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 18 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
ASSA

Advocate for the Petitioner(s) : Mr. S. Banik

Advocate for the Respondent(s) : Mr. M. J. Quadir
Mr. S. Baruah, Government Advocate
Mr. S. K. Talukdar, Government Advocate

Date of Hearing and Judgment: 29.08.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGEMENT AND ORDER (ORAL)

Heard Mr. S. Banik, the learned counsel appearing on behalf of the petitioners. Mr. S. K. Talukdar, the learned Standing Counsel, Cooperation Department appears on behalf of the respondent Nos. 1,2,4,5,6,7,8 & 9 and Mr. M. J. Quadir, the learned counsel appears on behalf of the respondent Nos. 10 to 19.

2. The subject matter of the instant writ petition is regarding the legality and validity of the order dated 06.10.2023 whereby the AGM of Mohanpur C.S Ltd. held on 25.04.2023 was cancelled as per Section 40(4)(a) of the Assam Cooperative Societies Act, 2007 (for short 'the Act of 2007').

3. From a perusal of the materials on record, it transpires that the election notification was published on 30.01.2023 by the Assistant Registrar of Cooperative Societies for conducting the Annual General Meeting and the election for constitution of the Board of Director of Mohanpur Samabai Samiti Ltd (for short 'the Society') for the year 2022-23 thereby scheduling it to be held on 27.02.2023. However on that date, the AGM could not be held on account of lack of quorum and accordingly the same was postponed to be held on 25.04.2023. Pursuant thereto, 27 shareholders submitted nominations which included 18 (eighteen) nominations from the weaker section, four (4) nominations from the stronger section, 4 (four) nominations for the women category and 1 (one) nomination from the SC/ST category.

4. Pursuant to the said nomination being scrutinized, 8 (eight) nominations were accepted from the weaker section and 1 (one) nomination was accepted from SC/ST section. 2 (Two) women shareholders who submitted the nomination withdrew and 4 (four) share holders from the weaker section withdrew their nominations. It is pertinent to mention that 6 (six) nominations from the weaker sections, 4 (four) nominations from the stronger section and 2 (two) nominations from the women section were rejected.

5. Being aggrieved by the rejection of the nominations filed by the Respondent Nos. 10 to 19 who belonged to the weaker section as well as the Stronger Section, they filed an election proceedings challenging rejection of their nomination in terms with Rule 27 of the Assam Cooperative Societies Election

Rules, 2019 (for short, 'Rules of 2019'). It may be very pertinent to mention that from a perusal of the memo of appeal which were filed by the respondent Nos. 10 to 19, it transpires that the nominations were cancelled on the alleged violation of Section 40(2) of the Act of 2007.

6. Pursuant to the filing of the said election proceedings, hearing was held and the Registrar of Cooperative Societies vide the impugned order 06.10.2023 held that the rejection of the nominations of the Respondent Nos. 10 to 19 on the ground of Section 40(2) of the Act of 2007 was illegal in view of the fact that the violation under Section 40(2) of the Act of 2007 could not be substantiated in the wake of absence of the Original Attendance Register. Accordingly, the Annual General Meeting/Elections of the Mohanpur S S Ltd. held on 25.04.2023 was cancelled in terms with Section 40(4)(a) of the Act of 2007 and there was a direction to the Zonal Joint Registrar of the Cooperative Societies, Silchar to hold fresh elections and to place one man management to manage the affairs with the society till then.

7. Being aggrieved vide the order dated 06.10.2023 the instant writ petition has been filed by the petitioners herein who are the seven out of the nine Directors whose nominations were accepted and were declared to be elected in terms with Section 13(a) of the Rules of 2009.

8. Mr. S. Banik, the learned counsel appearing on behalf of the petitioners submitted that though there were ten persons who jointly filed the election proceedings but a perusal of the impugned order would show that only five persons had pursued the said election proceedings. In other words, it is the submission of the learned counsel for the petitioners that if the five persons out of the ten persons who filed the election proceedings have pursued the said election proceedings, the Registrar vide the impugned order ought not to have cancelled the entire election process but ought to have passed appropriate directions under Section 41(9) of the Act of 2007. The said submission is on the basis that in the Society in question had 15 posts of Board of Directors and nine persons including the 7 petitioners had validly submitted their nominations which were duly accepted.

9. Mr. M. J. Quadir, the learned counsel appearing on behalf of the Respondent Nos. 10 to 19 submitted that the nomination of the said respondents were cancelled illegally by applying Section 40(2) of the Act of 2007 which could not have been applied inasmuch as the respondents had duly participated in the meeting and it was the fault of the respondents to maintain the Attendance Register which they failed to do so. The rights of the respondent Nos. 10 to 19 to participate in an election cannot be curtailed on account of the

fault of the respondent authorities.

10. Mr. S.K. Talukdar, the learned counsel submits that in view of the impugned order, if the nomination of the respondent Nos. 10 to 19 were illegally rejected on the basis of Section 40(2) of the Act of 2007, the entire election process has to be set at naught. He submitted that if the submissions of the petitioners are to be accepted and fresh elections is not cancelled, only 6 (six) posts of Directors would be available and the respondents who are 10 in numbers would have to fight election against 6 remaining posts which would be contrary to the mandate of the Act of 2007.

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 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.

18. With the above observations and directions the instant writ petition stands disposed of.

19. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant