

GAHC010080312022



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

Case No. : WP(C)/2837/2022

EYAKUB ALI AND 2 ORS
S/O- ANOWAR HUSSAIN
VILL-RAJAPARA PART-I
P.O AND P.S- BAGRIBARI
DIST- KOKRAJHAR, BTR, ASSAM
PIN-783349

2: AMZAD ALI
S/O- AFTAB UDDIN SARKAR
VILL-RAJAPARA PART-II
P.O AND P.S- BAGRIBARI
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783349

3: SAKMAN ALI
S/O- AJIT MONDAL
VILL-CHANGBANDHA KUTI
P.O - BAGRIBARI
P.S- GOURIPUR
DIST- DHUBRI
ASSAM
PIN-78334

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
COOPERATION DEPTT., DISPUR, GUWAHATI-06.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
KHANAPARA
DISPUR
GUWAHATI-22.

3:THE BODOLAND TERRITORIAL AREAS DISTRICTS (BTR)
REP. BY THE PRINCIPAL SECRETARY
BTR
KOKRAJHAR
ASSAM

4:THE SECRETARY
OF COOPERATIVE SOCIETIES
BTR
KOKRAJHAR
ASSAM

5:THE ADDL. REGISTRAR
OF COOPERATIVE SOCIETIES
BTR
KOKRAJHAR
ASSAM

6:THE DISTRICT DEPUTY REGISTRAR
OF COOPERATIVE SOCIETIES
BTR
KOKRAJHAR
ASSAM

7:THE MAHAMAYA SS LTD.
REP BY ITS SECRETARY
P.O AND P.S- BAGRIBARI
DIST- KOKRAJHAR
BTR
ASSAM
PIN-783349

8:ABDUL MAZID
S/O- LATE AYZUDDIN
VILL- JALABILA (KORARMARI)
P.O- JALABILA
DIST- KOKRAJHAR
PIN-783349

9:ALIMUDDIN SK
S/O- LATE KASHEM SHEIKH
VILL- JOYPUR
P.O- BARKANDA

DIST- KOKRAJHAR
PIN-783349

10: SABIBAR RAHMAN
S/O- LATE MOFIZUDDIN
VILL-ARAIANI PART-I
P.O AND P.S- BAGRIBARI
DIST- KOKRAJHAR
PIN-78334

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : SC, BTC

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

11-05-2022

Heard Mr. H. R. Ahmed, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing counsel, Co-operation Department for the respondent Nos. 1 & 2. Also heard Mr. B. Choudhury, learned Standing counsel, BTC for the respondent Nos. 3 to 6.

Petitioners herein are the shareholders of Mahamaya Samabay Samity in the district of Kokrajhar.

Section 40 of the Assam Co-operative Societies Act, 2007 relates to "Eligibility for a Director in Co-operative Society" wherein amongst others, Sub-Section 2 of Section 40 stipulates that "*such member has patronized the services of the cooperative society during the previous financial year to the extent and in the manner specified in the bye-laws and has attended at least two Annual General Meetings in the previous five years.*"

It is contended by the petitioners that the respondent Nos. 8, 9 & 10 who are also the shareholders of said Mahamaya Samabay Samity did not participate/attend at least in two of the Annual General Meetings of the said Samity during the last 5 years i.e., for the periods from 2016-17, 2017-18, 2018-19, 2019-2020 and 2020-2021 and inspite of that, they were allowed to contest the election to the post of Director of the Board of the Directors of the said Samity in the recently held

election of the said Samity on 13.03.2022 for which the result was declared on 15.03.2022 wherein they have own the election and have become the Board of Directors of the said Samity.

Being aggrieved with their election as Board of Directors of the said Samity held on 13.03.2022 in violation of the provisions of Section 40(2), the petitioners have preferred an appeal under Section 111 of the Assam Co-operative Societies Act, 2007 before the Additional Registrar of Co-operative Societies, BTC, Kokrajhar on 30.03.2022 against the respondent Nos. 8, 9 & 10 which is yet to be disposed of.

On being enquired, Mr. Ahmed, learned counsel for the petitioners placed before the Court that the authorities in the BTC, Kokrajhar, Co-operation Department vide Communication No. BTC/Coop-4/2011/Pt-I/24 dated 09.12.2013 issued a communication through the Joint Secretary BTC, Kokrajhar holding that the Assam Co-operative Societies Act, 2007 (as amended) so adopted shall extend to whole of BTAD area and that the Additional Registrar of Co-operative Societies-cum-Council Head of Department (CHD) shall be the Registrar of BTC within the meaning of the said 2007 Act and shall exercise all the powers under the said 2007 Act within the BTC areas as the "Registrar" and further, the provision of powers vested by the said 2007 Act to the State Government shall be exercised by the BTC in the Council area wherever applicable.

Mr. Talukdar, learned Standing counsel, Co-operation Department placed before the Court that the provisions of Rule 27 of the Assam Co-operative Societies' Election Rules 2019 published in the Assam Gazette Extraordinary on 27.01.2020 relating to "Redressal of Dispute" in such election with regard to the Societies registered under the Co-operative Societies Act, 2007 wherein it is provided that "*(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).*"

Issue notice, returnable by **6 (six) weeks**.

As Mr. Talukdar, learned Standing counsel, Co-operation Department and Mr. Choudhury, learned Standing counsel, BTC have accepted the notices on behalf of the respondent Nos. 1 & 2 and 3 to 6 respectively, no formal notice need to be issued to those respondents.

Petitioners shall serve requisite extra copies of this writ petition including the annexures appended thereto to Mr. Talukdar, learned Standing counsel, Co-operation Department and Mr. Choudhury, learned Standing counsel, BTC within two days from today, obtaining necessary acknowledgment from them in that regard.

Petitioners shall take steps for service of notices on the respondent Nos. 8, 9 & 10 by registered post with A/D on or before 13.05.2022, providing their proper and correct addresses with requisite postal stamps.

Pendency of this writ petition shall not be a bar for the Additional Registrar of Co-operative Societies, BTR, Kokrajhar, respondents No.5 to dispose of the appeal of the petitioner dated 30.03.2022 submitted under Section 111 of the Assam Co-operative Societies Act, 2007 (Annexure-10 to this petition) following the due procedure and the relevant rules in force as applicable on verification of the relevant records of said Mahamaya Samabay Samity in original giving an opportunity of hearing to the petitioners as well as the respondent Nos. 8, 9 & 10 and all the concerned authorities of said Mahamaya Samabay Samity.

List accordingly.

JUDGE

Comparing Assistant