

GAHC010208372024



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

Case No. : WP(C)/5147/2024

DHIRAJ MAZUMDAR AND 2 ORS
SON OF DHRUBA MAZUMDAR,
RESIDENT OF HN-43, PUB JYOTI NAGAR,
SWAHID SB CHOWK, GUWAHATI- 781020,
DISTRICT- KAMRUP(M), ASSAM.

2: DHIREN DEKA
SON OF LATE BHABEN DEKA

RESIDENT OF HN-2
CHANDMARI COLONY

NAMONI NIJARAPAR
GUWAHATI- 781003

DISTRICT- KAMRUP(M)
ASSAM.

3: N.P. RAO
SON OF N. GURUL

RESIDENT OF CENTRAL GOTANAGAR

MALIGAON
GUWAHATI- 781011

DISTRICT- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 21 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
COOPERATIVE DEPARTMENT,

GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI- 781006,
DISTRICT- KAMRUP(M), ASSAM.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
KHANAPARA
GUWAHATI- 781022

DISTRICT- KAMRUP(M)
ASSAM.

3:THE ADDITIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES

KHANAPARA
GUWAHATI- 781022

DISTRICT- KAMRUP(M)
ASSAM.

4:THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
KHANAPARA
GUWAHATI- 781022

DISTRICT- KAMRUP(M)
ASSAM.

5:INDUSTRIAL CO-OPERATIVE BANK LTD.
REPRESENTED BY THE ADMINISTRATOR

AND HAVING ITS OFFICE AT S.S. ROAD
LAKHTOKIA

GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

6:THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD.
HAVING ITS OFFICE AT S.S. ROAD
LAKHTOKIA

GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

7:THE CHIEF EXECUTIVE OFFICER CUM SECRETARY

INDUSTRIAL CO-OPERATIVE BANK LTD.
HAVING ITS OFFICE AT S.S. ROAD
LAKHTOKIA

GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

8:GANESH DEKA
PRESENTLY SERVING AS CHIEF EXECUTIVE OFFICER CUM SECRETARY

INDUSTRIAL CO-OPERATIVE BANK LTD.

HAVING ITS OFFICE AT S.S. ROAD
LAKHTOKIA

GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

9:ARUP BAISHYA
THROUGH THE ADMINISTRATOR

INDUSTRIAL CO-OPERATIVE BANK LTD.

S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

10:UPEN DEKA
THROUGH THE ADMINISTRATOR

INDUSTRIAL CO-OPERATIVE BANK LTD.

S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

11:THE RETURNING OFFICER
THROUGH THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM

KHANAPARA
GUWAHATI- 781022

DISTRICT- KAMRUP(M)
ASSAM.

12:AFROZ MOHAMMED
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

13:SAURAV HAZARIKA
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

14:ASHIM CHAMUAH
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

15:SWAPAN KUMAR PAUL
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

16:ANAMKIKIA MITRA
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD

LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

17:AKDAS ALI MIR
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

18:DIPAK MAHANTA
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

19:MUKUL CHANDRA DAS
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

20:JAGANNATH DAS
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM.

21:MUSTAFA MUSTAQ HUSSAIN
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)

ASSAM.

22:CHITRARATHA BARMAN
ELECTED MEMBER OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL
CO-OPERATIVE BANK LTD. THROUGH THE ADMINISTRATOR
INDUSTRIAL CO-OPERATIVE BANK LTD. AT S.S. ROAD
LAKHTOKIA
GUWAHATI- 781001
DISTRICT- KAMRUP(M)
ASSAM

For the Applicant(s) : Mr. K.P. Pathak, Advocate

For the Respondent(s) : Mr. S.K. Talukdar, SC

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : --30.09.2024

Issue notice returnable on 04.11.2024.

2. Mr. S.K. Talukdar, learned standing counsel appears on behalf of the respondent Nos. 1, 2, 3, 4 and 11 and accepts notice.
3. As the respondent Nos. 1, 2, 3, 4 and 11 are duly represented the petitioners are directed to serve extra copies of the writ petition to the learned counsels for the respondents during the course of the day
4. As regard, the respondents No. 5, 6, 7, 8, 9 and 10 the petitioners are directed to effect service by way of dasti routed through the Registry of this Court at the Head Office of the respondent No. 5 which is located at SS Road, Lakhtokia, Guwahati- 781001 and file an affidavit of service on or before the next date.

5. For the present, this Court is not inclined to issue notice upon the proforma respondents which shall be considered at the later stage if deem necessary.

6. The case of the petitioners herein is that pursuant to the notice issued for holding the elections by the respondent No. 6, 13(thirteen) share holders of the respondent No. 5 which is a Co-operative Society registered under the provisions of the Assam Co-operative Societies Act, 2007 (for short "the Act 2007") participated and in view of the provision of Rule 13(1)(a) of the Assam Co-operative Societies Election Rules, 2019 they were declared to be elected to the Board of Directors in the Annual General Meeting held on 06.09.2024. Thereupon the Minutes of the Annual General Meeting dated 06.09.2024 were approved by the Registrar of the Co-operative Societies in terms with Section 45 of the Act of 2007.

7. The case of the petitioners herein is that the respondent Nos. 9 and 10 were not eligible in terms with Section 40(3) and 40(5) of the Act of 2007 respectively, on the ground that the respondent No. 10 had an existing loan with the respondent No. 5 and the respondent No. 9 is a defaulter in payment of the dues to the respondent No. 5.

8. The learned counsel for the petitioners therefore, submitted that the election of the respondent Nos. 9 and 10 are liable to be interfered with by this Court. He therefore, submitted that pending notice, the respondent Nos. 9 and 10 should be debarred from functioning as Directors of the respondent No. 5.

9. Per contra, Mr. S.K. Talukdar, the learned standing counsel appearing

on behalf of the Co-operation Department submitted that the petitioners could have very well challenged the election of the respondent Nos. 9 and 10 in terms with Rule 27 of the Assam Co-operative Societies Election Rules, 2019. In addition to that, the petitioners could have very well approached the Registrar of the Co-operative Societies within a period of 15 days from the date of the minutes of the AGM being communicated to the Registrar of the Co-operative Societies.

10. The learned standing counsel submitted that in the instant case admittedly the petitioners have approached the Registry of the Co-operative Societies on 25.09.2024 which was even after the period of deemed approval in terms with Section 45 of the Act of 2007. The learned standing counsel for the respondent Co-operation Department further submitted that without hearing the respondent Nos. 9 and 10 this Court may not pass any interim orders.

11. This Court has given anxious consideration to their respective submissions.

12. This Court directs the respondent No. 5 to bring on record their stand by filing an affidavit by 30.10.2024 indicating as to whether the respondent Nos. 9 and 10 had incurred disqualification in terms with Section 40(3) and 40(5) of the Act of 2007 as alleged in the writ petition.

13. This Court further directs the Registrar of Co-operative Societies to bring on record its stand by filing an affidavit on or before 30.10.2024 as to whether the respondent Nos. 9 and 10 on the basis of the allegations and the documents enclosed in the writ petition are disqualified to be Directors of the respondent No. 5. In addition, to that the respondent

Nos. 9 and 10 are also directed to bring on record their stand by filing an affidavit.

14. For the present, this Court is not inclined to pass any interim order as without taking into account the stand of the respondent authorities, it would not be proper in the opinion of this Court to pass any interim order. However, the interim order would be considered on the next date.

15. The issue of the maintainability of the writ petition is kept open on the grounds submitted by the Standing Counsel of the Co-operation Department as recorded in paragraph Nos. 9 and 10 above.

16. List accordingly.

JUDGE

Comparing Assistant