

GAHC010052662024



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

Case No. : WP(C)/1476/2024

AYUB UDDIN LASKAR AND 13 ORS
S/O- LATE KALAMONI LASKAR,
R/O- VILLAGE- UTTARKRISHNAPUR PART-II,
P.O.- UTTARKRISHNAPUR,
DISTRICT- CACHAR, ASSAM.

2: ABDUL KALAM LASKAR
S/O- LATE SAMS UDDIN LASKAR

R/O- VILLAGE- UTTARKRISHNAPUR PART-II
P.O.- UTTARKRISHNAPUR
DISTRICT- CACHAR
ASSAM.

3: RAFIK UDDIN BARBHUIYA
S/O- LATE KALA MIA BARBHUIYA

R/O- VILLAGE- UTTARKRISHNAPUR PART-II
P.O.- UTTARKRISHNAPUR
DISTRICT- CACHAR
ASSAM.

4: HARIS ALI MAZUMDWER
S/O- LATE SABER ALI MAZUMDER

R/O- VILLAGE- SUBASHPUR PART-I
P.O.- UTTARKRISHNAPUR
DISTRICT- CACHAR

ASSAM.

5: AMRIT GOALA
S/O- RAMPRABESH GOALA

R/O- VILLAGE- ATALBASTI

P.O.- GHOONGUR

DISTRICT- CACHAR
ASSAM.

6: JALAL UDDIN LASKAR
S/O- LATE GULAM AKBAR LASKAR

R/O- VILLAGE- AMBIKAPUR PART-IV

P.O.- MEHERPUR

DISTRICT- CACHAR
ASSAM.

7: ABU DAS
S/O- LATE GIRI MOHAN DAS

R/O- VILLAGE- UTTARKRISHNAPUR PART-III

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

8: SALIM UDDIN BARBHUIYA
S/O- LATE MOSAID ALI BARBHUIYA

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

9: FARUQUE AHMED LASKAR
S/O- LATE KAMARU UDDIN LASKAR

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

10: KIRTIBAAS CHASA
S/O- LATE JAGADEB CHASA

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

11: LALON UDDIN BARBHUIYA
S/O- LATE SAMIR UDDIN BARBHUIYA

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

12: MOKTAR UDDIN MAZUMDER
S/O- LATE LATU MAZUMDER

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

13: MISLU AHMED CHOUDHURY
S/O- LATE ARZUMAN ALI CHOUDHURY

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM.

14: IMRANA AHMED MAZUMDER
S/O- FAISUL AHMED MAZUMDER

R/O- VILLAGE- UTTARKRISHNAPUR PART-II

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
COOPERATION DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 22.

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR ZONE
SILCHAR
DISTRICT- CACHAR
ASSAM

PIN- 788001.

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR
DISTRICT- CACHAR
ASSAM

PIN- 788001.

5:THE MEHERPUR-KRISHNAPUR COOPERATIVE SOCIETIES LIMITED
REPRESENTED BY ITS SECRETARY

VILLAGE- UTTARKRISHNAPUR PART-I

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM

PIN- 788006.

6:SMTI AYESHA SULTANA CHOWDHURY
D/O- HABIBUR RAHMAN CHOWDHURY

VILLAGE- UTTARKRISHNAPUR PART-I

P.O.- UTTARKRISHNAPUR

DISTRICT- CACHAR
ASSAM

PIN- 788006

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

Advocate for the respondent(s): Mr. SK Talukdar

Standing Counsel,
Cooperation Department,
Govt. of Assam
Ms. S Parveen
For respondent No.6.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 31-08-2024

JUDGMENT & ORDER(ORAL)

Heard Mr. S Banik, the learned counsel appearing on behalf of the petitioners. Also heard Mr. SK Talukdar, the learned counsel appearing on behalf of the Cooperation Department of the Government of Assam as well as the officials under the Cooperation Department of the Government of Assam. Ms. S Parveen, the learned counsel appears on behalf of the respondent No.6.

2. 14 writ petitioners, who have been elected uncontested in the Annual General Meeting (for short, 'the AGM')/Election of Meherpur Krishnapur Cooperative Society Limited (for short, the Cooperative Society) held on the 18.08.2023 have approached this Court by filing the instant writ petition challenging the order dated 21.09.2023 passed by the Registrar of Cooperative Societies, Assam.

3. The brief facts leading to the challenge is that the Board of Directors of Meherpur Krishnapur Cooperative Society Limited was dissolved on account of not holding the AGM/Election within the statutory period and a One-Man Committee was appointed by the jurisdictional authority vide the order dated 17.12.2022 for managing the affairs of the Co-operative Society as also for holding the AGM/Election within 90 days so as to constitute the new managing committee.

4. Before further proceeding, this Court finds it very pertinent to take note of that in view of Section 41 (6) of the Assam Cooperative Societies Act, 2007 (for short, the Act of 2007), a responsibility is cast upon the Officer of the Cooperation Department for constitution of a Board within 90 days from the date of such appointment. This aspect of the matter is pertinent in view of the fact that with the dissolution of the Board, the entire responsibility, therefore, is in the shoulder of the One-Man Committee, so appointed by the Department of Cooperation.

5. Proceeding further, it is seen that under the aegis of the One-Man

Committee, a voters list was prepared on 26.12.2022. Thereupon, a notice was issued on 11.01.2023 notifying the names of dead persons in the draft voters' list, which would be corrected by substituting the names of the legal heirs and that applications to that effect be submitted before the said Secretary from 14.01.2023 to 31.01.2023. Consequent upon the publication of the said notice dated 11.01.2023, 13 candidates applied for substitution of the names against dead shareholders and a correction was duly effective and the final voters' list was published on the 08.02.2023 by the One-Man Committee. It is pertinent to mention that this final voters list was approved and countersigned by the Zonal Joint Register of Cooperative Society, Silchar Zone, Silchar. A resolution, thereupon, on 08.02.2023 was adopted, whereby it was made clear that 2081 voters were from weaker section and 218 voters from stronger section were eligible to cast vote. Thereupon, the final voters list was published on 08.02.2023. The said voters list was not challenged as per the mandate of the Act of 2007. Subsequent thereto, the Secretary of the Cooperative Society issued a notice dated 23.02.2023 whereby it was notified that the date for submission of the nominations was 01.03.2023 and the date for withdrawing of the nomination was upto 03.03.2023. It was also mentioned that the date for AGM/Election was on 11.03.2023.

6. At this stage, it is very pertinent to mention that the respondent, No.6, along with 10(ten) others on 09.03.2023, submitted a complaint to the Minister for Cooperation, Government of Assam. A perusal of the complaint, which has been enclosed as Annexure-E to the writ petition transpires that allegations were made that the Ex-Chairman of the Cooperative Society had been running the Society, without following Statutory Government Guidelines and Rules, and

the Ex-Chairman and his associates, have been involved in malpractices and corruption in respect to the management of the society. It was also alleged that the Ex-Chairman circulated a notice for general meeting of the Society proposed to be held on 11.03.2023 and such decision to hold the election by the Ex-Chairman was contrary to the Act of 2007. It was also alleged that 40% of the members of the Cooperative Society had already expired and the voters list have not been prepared and without preparing the new voters list, the election would not be free and fair. Under such circumstances, the respondent No.6, along with 10(ten) others, requested that the elections be postponed until a new voters list is prepared.

7. At this stage, this Court finds it very pertinent to observe that from a perusal of the said representation submitted to the Minister of the Cooperation Department, it reveals that the respondent No.6, along with 10(ten) others, seemed to have been aware of the notice dated 11.01.2023 and the final voters list dated 08.02.2023 had been published. It further reveals that the respondent No.6, along with 10(ten) others, were unaware that it was the One-Man Committee, who had decided to hold the election in terms with Section 41 (6) of the Act of 2007 and the voters list was published after the approval of the Zonal Joint Registrar of the Cooperative Society.

8. In terms with the notice issued for holding the AGM as well as the elections, 17 candidates submitted nominations before the Returning Officer, who was also appointed by the Cooperation Department. Out of the 17 candidates, who submitted the nominations, one candidate withdrew and nomination of two candidates were rejected. Under such circumstances, there

were only 14 valid nominations.

9. At this stage, it is relevant to mention that the total number of shareholders of the Society is 2299. However, on the date of the AGM/Election fixed on 11.03.2023, the quorum was not achieved and accordingly the AGM/elections were adjourned to 18.03.2023, on which date, as per the petitioners, 359 shareholders were present at the meeting. Taking into account that only 14 candidates had submitted valid nominations for 15 posts of the Board of Directors, the Returning Officer, in exercise of the powers in terms of Rule 13(a) of the Assam Cooperative Societies Election Rules, 2019 (for short, 'the Rules of 2019') declared the petitioners as duly elected.

10. It is very pertinent to observe, taking into account the dispute involved, that apart from the Returning Officer, who was appointed by the Register of Cooperative Societies, two Observers were also appointed. These two Observers, pursuant to the election being held, submitted an observation report to the Assistant Registrar of Cooperative Societies, Silchar on 18.03.2023, stating *inter alia*, that the adjourned AGM / Election was held on the 18.03.2023 at 10:00 A.M, and 359 numbers of shareholders were present and signed in the AGM proceeding books. It was also mentioned by the Observer in their report that as per the office record, total eligible shareholders were 2299 and the required quorum was 230.

11. The record further reveals that the Registrar of Cooperative Societies passed an order dated 03.04.2023 disapproving the AGM/Election on the basis

of the complaint filed by the respondent No.6 and 10(ten) others before the Minister of Cooperation. It is pertinent to recapitulate that the complaint upon which the Registrar of Cooperative Society acted to disapprove the AGM/Elections is the same complaint dated 09.03.2023 submitted to the Minister of the Cooperation Department, the details of which had been referred to paragraphs 6 & 7 hereinabove.

12. This Court in order to ascertain with certainty enquired with Mr. SK Talukdar, the learned counsel appearing on behalf of the respondent Department, as to whether the complaint referred to in the order dated 03.04.2023 is the complaint which was submitted to the Minister of Cooperation Department. The learned counsel submitted that the said representation dated 09.03.2023 which was submitted by the respondent No.6 along with 10 others was forwarded by the Minister concerned to the Registrar of Cooperative Societies.

13. It is the case of the petitioners that the petitioners were never heard during the proceedings which led to the order dated 03.04.2023 and this aspect of the matter seems to be an accurate statement in view of the fact that in the order dated 03.04.2023 it has been mentioned as to who were the persons who were present in the hearing on 28.03.2023.

14. This Court at this stage would like to take note of Section 45 of the Act of 2007 which stipulates that any general or a special meeting of the Board has to be approved by the Registrar within a period of 15 days from the date of receipt

of the proceedings and it further mandates that if no approval is received within the said period, the proceedings shall be deemed to have been approved.

15. It is not known as to when the Registrar of Cooperative Societies had received the proceedings. However, it is clear from the Observer's report dated 18.03.2023 that the same was duly addressed on the 18.03.2023 and sent to the Assistant Register of Cooperative Societies. This aspect assumes importance taking into account that as on the date of passing of the order dated 03.04.2023, the period of 15 days was already over if counted from 18.03.2023.

16. The learned counsel appearing on behalf of the Cooperation Department, however, submits that the Registrar was in session of the matter as a hearing was conducted on 28.03.2023. But the said submission does not impress this Court, taking into consideration that Section 45 does not grant an exception if the Registrar was taking more time for deciding the question to approve or not the AGM/Election. Even otherwise, the petitioners were not heard on 28.03.2023, as is apparent from the order dated 03.04.2023 itself. The petitioners being aggrieved approached this Court by filing a writ petition which was registered and numbered as WP(C)No.2052/2023.

17. This Court taking into account that a perusal of the order dated 03.04.2023 did not show that the petitioners herein were at all heard, set aside the said order dated 03.04.2023 and directed the Registrar of Cooperative Societies to take a decision in respect to the complaint so filed by the respondent No.6 within a period of 1(one) month from the date of the said order by giving the

parties, including the petitioners herein, an opportunity of hearing. This order was passed on the 19.07.2023. It is further seen that pursuant to the said order passed by this Court on 07.09.2023, the petitioners had submitted a detailed representation to the Registrar of Cooperative Societies to dismiss the complaint dated 09.03.2023 and to approve the proceedings dated 18.03.2023 of the AGM/Election of the Cooperative Society and allow them to form a new executive committee to manage the affairs of the Society. Therefore, the order impugned order was passed on 21.09.2023 which has been assailed in the instant proceedings.

18. In the backdrop of the above facts, let this Court take note of the submissions made by the learned counsels appearing on behalf of the parties.

19. Mr. S Banik, the learned counsel appearing on behalf of the petitioners submitted that this is the case where the Registrar of Cooperative Societies had taken a decision not to approve the AGM/ Election of the Society for vested reasons. He submitted so on the basis that the Registrar Cooperative Societies had not at all applied his mind and perfunctorily exercised his jurisdiction. Drawing reference to the complaint dated 09.03.2023, submitted by the respondent No.6 along with 10(ten) others, and the same being forwarded by the Minister of the Cooperation Department, the learned counsel submitted that the same had prevailed upon the Register of the Cooperative Societies, rather than the facts which were apparent on the records. He further submitted that the voters list was prepared by the One- Man Committee, who had been appointed by the Cooperation Department. Objections were called for and only 13 persons have filed their objections and thereupon, on 08.02.2023, the final

voters list was published, which was approved by the Zonal Joint Registrar of Cooperative Societies. In the said approved list, which was published on 08.02.2023, there were total 2299 eligible voters. The respondent No.6, along with 10(ten) others, though aware of the said process did not want to mention the same before the Minister in the representation. The learned counsel submitted that a perusal of the representation also shows that it was absolutely a vague representation and had been only filed to stall the election proceedings which was to be held on 11.03.2023. In addition to that, the learned counsel submitted that the respondent No.6 could have very well participated in the AGM/Election. But she did not. He, therefore, submitted that the power conferred upon the Registrar of Cooperative Societies ought to have been exercised in the manner in which the law permits. The learned counsel further submitted that in paragraph 13 of the writ petition, it has been categorically mentioned that the ground on which the impugned order was passed is without application of mind, *inasmuch as*, there is nothing mentioned in the said order as to how many persons who have twice signed the attendance register and how the elections have been effected.

20. Further continuing with his submissions, the learned counsel for the petitioners submits that a perusal of Section 41 of the Act of 2007 would show that the elections of the Directors are to be held in a general meeting called for the purpose. The learned counsel submits that though an AGM is a general meeting, but a conjoint reading of Section 32 with Section 39 of the Act of 2007 would show the difference between the two. He, therefore, submitted that unless and until the Registrar of Cooperative Society have stated how it affected the election with necessary particulars, more so, in a case where all the

petitioners have been elected uncontested, the impugned order suffers from total non application of mind.

21. Mr. SK Talukdar, the learned counsel appearing on behalf of the Cooperation Department, on the other hand, submitted that a perusal of the impugned order would show that the power has been exercised by the Registrar is in terms with Section 45 of the Act of 2007 of not approving the general meeting as well as the AGM on the ground of the illegalities which was noticed from a perusal of the attendance sheet. He further submitted that the Registrar of Cooperative Societies found that the voters list of the Cooperative Society, in question, was full of anomalies and as such was justified in passing the impugned order.

22. Ms. S Parveen, the learned counsel appearing on behalf of the respondent No.6 submitted that the voters list which was prepared by the One-Man Committee under the aegis of the Registrar of the Cooperative Societies was a defective voters list and, as such, the respondent No.6 along with 10(ten) others had to approach the Minister of Cooperation Department. She submitted that it is only then, due steps were being taken. But however, as the steps were taken at a much later stage, the election was also held. She, therefore, submitted that in terms with Section 26 of the Act of 2007, the manner in which the voters list is to be prepared have been stipulated. Further to that, she submitted that in terms of Section 41(1) of the Act of 2007, the superintendence and direction and control of the preparation of the electoral rolls is vested upon the Registrar of the Cooperative Societies and under such circumstances, the Registrar of the Cooperative Societies was required to look into it that the voters list have been prepared properly. The learned counsel, therefore, submitted that

a shareholder would be an elector in terms with Section 3(h) of the Rules of 2019, if and only if the voters list have been prepared in accordance with the mandates of the Act of 2007. The learned counsel submitted that in the instant case, 40% of the shareholders have already expired, but there was no steps taken for making rectification of the voters list and as such, with the defective voters list, the AGM as well as the election were held and as such, the Registrar of the Cooperative Societies was justified in disapproving the AGM/Election held on 18.03.2023 by the impugned order.

23. I heard the learned counsels appearing on behalf of the parties and have given my anxious consideration to their respective submissions.

24. At the outset, it is relevant to mention that due opportunity was given to the Cooperation Department to file their affidavit. However, no affidavit was filed. On the earlier occasion, when this Court had asked the Standing Counsel appearing on behalf of the Cooperation Department as to whether they would like to file the affidavit, his submission was that he would argue on the basis of the materials which are already there on record.

25. In the above backdrop, let this Court analyse and determine the dispute on the basis of the materials before this Court. In the order dated 21.09.2023, the Registrar of the Cooperative Societies had disapproved the elections/AGM held on 18.03.2023 on the basis that many shareholders have signed the attendance sheet twice and the signatures have been found against the dead share holders. However, there is nothing mentioned in the said impugned order as to how even

assuming the observations to be correct had materially effected the uncontested elections. The impugned order is silent as to how many duplicate signatures were there and how many signatures were there of dead shareholders. This Court finds it relevant to observe that the power conferred upon the Registrar is a quasi-judicial power and as such an AGM/Election can only be disapproved on the basis of proper reasons and not merely at the whims and fancies of the Registrar, that too, on a complaint filed much before the AGM/Election were held.

26. Another reason assigned in the impugned order is that the voters list of the Cooperative Society was full of anomalies. However, it appears that these are sweeping remarks without any basis, more so, where the said voter lists have been prepared by the One-Man Committee, who is a Departmental Officer appointed by the Registrar of the Cooperative Societies and due objections were called and thereupon, on 08.02.2023, the Zonal Joint Registrar of Cooperative Societies had approved the voters list. When so many authorities have taken the pains to make the voters list, in the opinion of this Court, the Registrar of the Cooperative Societies cannot brush aside the said voters list, merely, by stating that the voters list is full of anomalies, without stating in detail as to what were the anomalies he was referring to. The above aspect of the matter clearly shows non-application of mind. It is trite at this stage to observe that when an order is passed by a statutory authority without application of mind, the said order is infected with arbitrariness and unreasonableness and violative of Article 14 of the Constitution.

27. Proceeding further, it would be seen that the basis on which the Registrar of

the Cooperative Societies have exercised the jurisdiction is on the basis of a complaint filed by the respondent No.6 along with 10(ten) others on 09.03.2023. The said complaint, upon being perused, would show that there is a vague statement made that 40% of the shareholders have expired. During the course of the hearing, this Court had asked the learned counsel appearing on behalf of the respondent No.6, who had submitted the representation as to who are the 40% of the shareholders, who had expired. But nothing could be shown to substantiate the said allegation.

28. This Court further takes note of the submission of the learned counsel appearing on behalf of the respondent No.6 to the effect that the voters list ought to have been made in a proper manner and as such, the entire election as well as the AGM was not in accordance with law. Section 26 (3) of the Act of 2007 categorically stipulates the manner of challenging the voters list. The manner of challenging a voters list, as stipulated in Section 26(3) is to file an appeal to the Board within 10(ten) days from the date of affixing of the list on the Notice Board. It is seen that the list was affixed on 08.02.2023 and taking into account that the One-Man Committee was the person, who was representing the Board, the application should have been filed before him and not to the Minister of the Cooperation Department. Even the representation dated 09.03.2023 does not show that the respondent No.6 along with 10 others had approached the One-Man Committee. Under such circumstances, this Court taking into account the well settled principle of law that when the statute mandates a particular thing to be done in a particular manner, and then it should be done in such manner or not at all, is of the opinion that the said contention so made to support the impugned order dated 21.09.2023 is totally

misconceived.

29. Accordingly, this Court is of the opinion that as the impugned order dated 21.09.2023 has been passed without application of mind and without any basis, as is apparent from the materials which are placed before this Court, this Court sets aside the impugned order dated 21.09.2023.

30. The writ petition, accordingly, stands allowed. No costs.

JUDGE

Comparing Assistant