

GAHC010051022024



2025:GAU-AS:11440

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

**Case No. : WP(C)/1506/2024**

MD ABDUL HASIB AND 7 ORS  
S/O LATE ISAM UDDIN  
RESIDENT OF VILLAGE MAZ UDALI, PO PHULTOLI BAZAR, PS LANKA,  
DIST HOJAI, ASSAM 782446

2: RUSHNA BEGUM LASKAR  
W/O JAMIR UDDIN  
VILLAGE UDALI GAON  
PPO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

3: GIAS UDDIN  
S/O ABDUL RAHIM  
VILLAGE 2 NO. RAM NAGAR  
PO LACHIT PATHAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

4: NIZUM UDDIN  
S/O LATE WAHAB ALI

VILLAGE BORJOHA GAON

PO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

5: AMIR UDDIN  
S/O LATE SIKANDAR ALI

VILLAGE KACHARI GAON  
VILLAGE UDALI GAON  
PO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

6: AINUL HOQUE  
S/O ABDUL KADIR  
VILLAGE KACHARI GAON  
PO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

7: AZAD HUSSAIN  
S/O ABDUL MATIN  
VILLAGE SING GAON  
PO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 782446

8: HUSSAIN AHMED  
S/O MONIR ALI

VILLAGE UDALI GAON  
PO UDALI BAZAR  
PS LANKA  
DIST HOJAI  
ASSAM 78244

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,  
CO OPERATION DEPARTMENT, DISPUR GUWAHATI 781006

2:THE REGISTRAR OF CO OPERATIVE SOCIETIES  
ASSAM  
SAMABAI BHAWAN  
KHANAPARA  
GUWAHATI 781022

3:THE DISTRICT COMMISSIONER

HOJAI  
ASSAM 782435

4:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES

HOJAI  
ASSAM 782435

5:THE RETURNING OFFICER  
ODALI SAMABAI SAMITY LTD. HOJAI  
ASSAM 782435

6:SIRAJUL HOQUE BORBHUYAN  
S/O LATE SUNUMIYA BORBHUYAN  
VILLAGE BORJOHAGAON

PO UDALI BAZAR  
PS LANKA DIST HOJAI  
ASSAM 782446

7:JAKIR HUSSAIN CHOUDHURY  
S/O NURUL HOQUE CHOUDHURY  
VILLAGE AND PO LACHIT PATHAR  
PS LANKA  
DIST HOJAI ASSAM 78244

**Advocate for the Petitioner** : MR. I A TALUKDAR, MS N.RAHMAN,MR. B HUSSAIN

**Advocate for the Respondent** : SC, CO OP, FOR CAVEATOR,MR. B SHARMA,MR. H DAS,GA,  
ASSAM

**BEFORE**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the petitioners : Shri IA Talukdar

Advocate for the respondents : Shri SK Talukdar, SC-Cooperation Deptt.  
Ms. M. Barman, GA-Assam  
Shri H. Das, R.- 6 & 7.

Date of hearing : **12.08.2025**

Date of Judgment : **27.08.2025**

**JUDGMENT & ORDER**

The petitioners, who are 8 in nos., have joined together in challenging an order dated 24.01.2024 issued by the Registrar of Cooperative Societies, Assam, whereby the elections held for the Odali Samabai Samity Limited (hereinafter the Samity) was disapproved and a One Man Committee has been constituted.

2. As per the facts projected, a notice for election for the aforesaid Samabai Samity was published on 24.08.2023. Vide another order of the same date, the Returning Officer and Assistant Returning Officer were appointed for the said elections, which were scheduled on 23.09.2023. The petitioners had contested in the said elections held on the scheduled date i.e. 23.09.2023 and the counting was held on 25.09.2023 which had continued till the wee hours of 26.09.2023 and the results were declared wherein the present petitioners along with 7 others were declared to be elected. In the said elections, however, the respondent nos. 6 and 7 were not elected. On 26.09.2023, an application was submitted by respondent no. 6 for recounting wherein anomalies were alleged in the election process. On the next date i.e. 27.09.2023, another application for recounting was made by respondent nos. 6 and 7. On the aforesaid application dated 27.09.2023, the Assistant Registrar of Cooperative Societies, Hojai (hereinafter, ARCS) had issued a communication dated 29.09.2023 to the Returning Officer to make an enquiry.

3. On 06.10.2023, the respondent nos. 6 and 7 had preferred an appeal before the Registrar of Cooperative Societies, Assam against the election process. On the same day, the ARCS had passed an order dated

06.10.2023 whereby the prayer for recounting was rejected as the said complaint was not received in time and further that the requisite fees for such recounting was not paid. The order was passed after receipt of a report which was called for. Thereafter, the said respondent nos. 6 and 7 had filed a writ petition in this Court being WP(C)/6206/2023. This Court, however by taking note of the fact that an appeal was filed and it might amount to be a parallel proceeding had dismissed the writ petition vide order dated 10.11.2023.

4. In the said appeal, hearing was held and thereafter vide the impugned order dated 24.01.2024, the election was disapproved and a One Man Committee was constituted. It was stated that though the results of the election were declared on 26.09.2023, the date on the result sheet was given as 25.09.2023 and therefore there was gross anomaly. A report of the SP, Hojai was also taken into consideration regarding keeping of the ballot boxes after conclusion of the election.

5. The petitioners have also obtained the communications relating to a show-cause notice issued to the Returning Officer on the aforesaid aspect and the said Returning Officer had submitted a reply on 17.02.2024 wherein the aspect of human error in putting the date has been stated. The petitioners have highlighted that the counting continued from 25.09.2023 till the wee hours of 26.09.2023 and therefore while putting the date with the signature, the Returning Officer had given the date as 25.09.2023 and this aspect was clearly explained by the Returning Officer as a human error.

6. I have heard Shri I.A. Talukdar, learned counsel for the petitioners. I have also heard Shri SK Talukdar, learned Standing Counsel, Cooperation Department as well as Shri H. Das, learned counsel for the respondent nos.

6 and 7. Ms. M. Barman, learned State Counsel is also present.

7. Shri I.A. Talukdar, the learned counsel for the petitioners have submitted that the so-called anomaly have been clearly explained by the Returning Officer in his reply dated 17.02.2024. He has also submitted that the complaints dated 26.09.2023 and 27.09.2023 which have been put on record would reveal that there were no grounds at all for such complaint. He has also submitted that the aspect of keeping the ballot boxes in a Guest House before taking the same to the police station are not relevant to the issue involved. He has submitted that the aforesaid issue was not even raised in the complaint. He has also submitted that even otherwise, though a report was called for from the Superintendent of Police of the district wherein it has been stated that the ballot boxes were kept in Sarada Guest House before taking the same to the police station, such action was after declaration of the results on completion of the counting and therefore the same would have no consequence on the results of the election. He has also submitted that the practical aspect cannot be lost sight of inasmuch as, the counting had continued till the wee hours of 26.09.2023 and at that time the boxes were taken to a nearby Guest House and in the morning were deposited in the police station. He has also submitted that the petitioners and 7 others being duly elected in accordance with law, appointment of a One Man Committee will be against the spirit of the Act wherein the objective is for self-governance.

8. *Per contra*, Shri S. K. Talukdar, learned Standing Counsel of the Cooperation Department has opposed the writ petition. He has submitted that apart from the grounds cited in the impugned order dated 24.01.2024 i.e. with regard to keeping the ballot boxes in a Guest House before it was

taken to the police station, there are other grounds also. By drawing the attention of this Court to the affidavit-in-opposition filed on 22.05.2024 by the respondent no.2, the learned Standing Counsel has submitted that as Rule 2(u) of the Assam Cooperative Societies Rules of 2019 (in short, Rules of 2019) defines "Strong Room" which means the nearest police station / outpost or treasury office and there was violation of the said requirement. It has also been stated that there was electricity disruption in the process of counting of votes and therefore the aspect of anomalies cannot be ruled out. He has submitted that the Registrar of the Cooperative Societies as the election authority has got wide and extensive power under Rule 27 to pass necessary orders. He has also highlighted that the other complainants were not made parties in the writ petition and only two complainants namely the respondent nos. 6 and 7 have been made parties and therefore the petition is not maintainable.

9. The learned Standing Counsel for the Cooperation Department has referred to Section 41(6) of the Act and has submitted that the Registrar has been vested with powers to appoint a One Man Committee. He has drawn the attention of this Court to a notification dated 23.05.2012 whereby under Section 3(2) of the Act, delegation of powers have been made to the Assistant Registrar and the said delegation also includes the power under Section 45(1) of the Act. He has also referred to Rule 27 of the Rules of 2019 read with Rule 2(f) with regard to redressal of disputes and the definition of election authority which means the Registrar of Cooperative Societies or any Officer delegated with such powers. He has accordingly submitted that there was no error of jurisdiction on the part of the Assistant Registrar of Co-Operative Societies. He has accordingly

submitted that the writ petition be dismissed and a direction be given to hold fresh elections in accordance with law. He has also placed before this Court the original records of the case.

10. Supporting the submissions made on behalf of the Department, Shri H. Das, learned counsel for the respondent nos. 6 and 7 has drawn the attention of this Court to the affidavit-in-opposition filed on 22.05.2024. He has submitted that the said respondent nos. 6 and 7 had objected in the counting process and the impugned order dated 24.01.2024 is wholly justified.

11. The rival contentions of the learned counsel for the parties have been duly considered and the materials, including the records in original placed before this Court have been carefully perused.

12. It is not in dispute that the elections which were held on 23.09.2023 was preceded by notice dated 24.08.2023 and appointments of Returning Officer and Assistant Returning Officer. It is also not in dispute that the counting of the elections was held on 25.09.2023 which continued till the wee hours of 26.09.2023 when the election results were declared. It however transpires that in the result sheets, the Returning Officer had put the signature as 25.09.2023 which is the principal ground of passing the impugned order. The records would reveal that while the respondent no. 6 had submitted an application for recounting on 26.09.2023, the respondent nos. 6 and 7 had submitted another application for recounting on 27.09.2023. The ARCS, Hojai had accordingly directed the Returning Officer to make an enquiry on the complaint dated 27.09.2023. In the meantime, on 06.10.2023, the appeal was filed by the respondent nos. 6 and 7 before the Registrar of Cooperative Societies. On the same date i.e. 06.10.2023,



the Assistant Registrar of Co-Operative Societies had rejected the application on two grounds, namely the same was not received in time and moreover the requisite fee was not paid.

13. The appeal which has been preferred by the respondent nos. 6 and 7 before the Registrar of Cooperative Societies is not against the order of rejection by the ARCS but an independent appeal on the aspect of the election and had prayed for recounting.

14. The impugned order has been carefully perused and the principal ground of passing the same is with regard to the date put by the Returning Officer as 25.09.2023 instead of 26.09.2023. As noted above, the counting which started on 25.09.2023 had continued and was completed after midnight in the wee hours of 26.09.2023. The aforesaid aspect has been explained by the Returning Officer in his reply to the show-cause notice submitted on 17.02.2024 terming the same as human error.

15. It may be mentioned that the aspect of keeping the ballot boxes in a Guest House before it was taken to the police station was not a part of the complaint on which the appeal has been filed. Be that as it may, the Registrar had sought for a report from the Superintendent of Police who had informed the fact of keeping the ballot boxes in a Guest House before the same were put in the police station. The aforesaid aspect, even if taken to be a relevant one, would however have to be examined from the point of view that such keeping of ballot boxes in a Guest House before the same were ultimately taken to the police station was after completion of the counting and declaration of the results. In the considered opinion of this Court, the same would not have a material bearing on the results of the election and can at best be termed as a mere aberration on the procedure

of the election process.

16. This Court is unable to accept the submission made on behalf of the Department that the powers can be traced to Section 41(6) of the Act read with the notification dated 23.05.2012. In the considered opinion of this Court, the power under Section 41(6) of the Act can be exercised only under the following conditions:

(i) When the Board fails to arrange for holding election before the expiry of the term of the Board or Delegates.

(ii) Where there are no Directors remaining on the Board.

Neither of the aforesaid conditions is present in the case at hand. It is not a case where the Board had failed to hold the election before the expiry or that there were no Directors remaining.

17. There is another aspect of the matter which requires consideration. As noted above, the Election Authority has been defined under Rule 2(f) of the Rules which is the Registrar of Cooperative Societies. Election disputes are to be redressed as per Rule 27 which however stipulates of preferring such appeal within 3 days from the date of declaration of the results. For ready reference, the relevant portion of the aforesaid provision is extracted hereinbelow-

***“27. Redressal of Dispute.-***

*(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) ...”*

18. The results were declared on 25.09.2023 and the appeal was filed on 06.10.2023 which is beyond the limitation prescribed of 3 days. The appeal has mentioned about the said delay which makes at apparent that the respondent nos. 6 and 7 were aware of the aspect of limitation. The impugned order however does not even make a passing remark as to a consideration for condonation of such delay. It is a settled position of law that when a period of limitation is prescribed, unless the delay is condoned the adjudicating authority cannot assume jurisdiction.

19. The powers to be exercised by the Registrar as the "Election Authority" which is defined under Rule 2(f) of the Rules of 2019 is required to be done in the manner prescribed under Rule 27. Such procedure has to be in consonance with the objective of the Act. The scheme of the Act and the Rules is to have a self-governance through elected members and unless the grounds set forth are overwhelming, such powers are to be exercised in a restricted manner. The aspect of limitation which has been laid down in the statute is also required to be followed in a manner which is in furtherance of the objective of the Act. Though in a given case, the delay can be condoned, what is required is that there has to be some deliberation and discussion as to why the delay was condoned which is not found in the instant case.

20. In view of the aforesaid discussion, this Court is of the opinion that a case for interference is made out. Accordingly, the impugned order dated 24.01.2024 passed by the Registrar of Cooperative Societies, Assam is set aside. The elected Board of Directors be accordingly allowed to discharge their duties till completion of the term subject to fulfillment of all Rules and Regulations.

21. The writ petition stands allowed. Interim order passed earlier stands vacated.

22. The records in original be handed over to the learned Standing Counsel, Cooperation Department.

**JUDGE**

**Comparing Assistant**